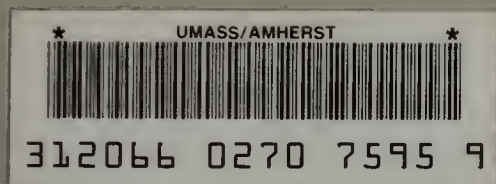


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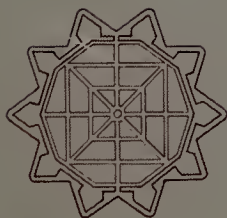
Massachusetts Selectmen



Second Edition

Editor
Jane Seagrave

Associate Editor
Donald Levitan



Published by the Massachusetts Municipal Association, Boston, Massachusetts

The preparation of this book was funded through
an Incentive Aid Grant Awarded by the Executive
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THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

MICHAEL S. DUKAKIS
GOVERNOR

Dear Selectmen:

The development of local government in Massachusetts may be considered the forebear of the democratic form of government in the United States; after all this is where it all began.

In the early days, all local governments were towns, governed by town meetings. Each town chose from among themselves a given number of selectmen who established the permanency of the town and oversaw the town's affairs. Thus, the part-time citizen-administrator emerged as a permanent part of local government in our commonwealth. This, their heritage, continues to burn brightly.

Over the years, the commonwealth has supported towns through forthright legislation such as the Home Rule Amendment and has cooperated with them through active participation by the legislature and my office in matters of mutual concern and through the establishment of a mutuality of interests in the Local Government Advisory Committee.

The ever-increasing complexity of local government in Massachusetts requires informed municipal officials. Information and assistance come from many sources--state agencies, the Massachusetts Municipal Association, and publications like this Handbook. The Handbook, in fact, is a clear manifestation of the close working relationship between the state and local governments. The book is supported in part by a grant from the Executive Office of Communities and Development (EOCD). Officials from EOCD and other agencies, as well as from the Legislature, have also contributed their knowledge.

It is my pleasure to recommend this book to you and to continue to offer assistance through the various state secretariats, departments, and agencies. Keep up your good work. You have our admiration and support.

Sincerely,

A large, stylized handwritten signature of Michael S. Dukakis, written in dark ink. The signature is fluid and cursive, with the first name 'Michael' being particularly prominent and overlapping the last name 'Dukakis'.

Michael S. Dukakis
Governor

DEDICATION

This book is dedicated to all selectmen, past, present, and future, those gallant men and women who have dedicated much of their personal time to providing the citizens of Massachusetts with a well-managed environment.

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As it is with most books of this type, a large number of individuals gave freely of their time and expertise. It is with pleasure that we acknowledge their valued contribution. This book was prepared under the direction and review of an advisory group:

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Jane Seagrave
 Donald Levitan

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Jane Seagrave, editor of the 1977 edition of the *Handbook for Massachusetts Selectmen*, has a background in journalism and local government. A graduate of Bowdoin College, she did postgraduate work at the John F. Kennedy School of Government at Harvard University. She worked for the Massachusetts and New Mexico municipal associations and spent six years with The Associated Press. She is currently vice president-editorial for Lawyers Weekly Publications.

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PREFACE

This publication is designed to serve both as an introduction for new or prospective selectmen to the nature of the office and as a reference manual for selectmen of all lengths of service. We hope that the book will also be useful to other state and municipal officials as well as to citizens eager to learn more about how their town government works.

The scope of the *Handbook for Massachusetts Selectmen* has expanded greatly since it was first developed more than thirty years ago. The earliest versions were largely compilations of state laws that dealt directly with selectmen's legal duties. Today, the job of selectman requires a much broader understanding of local government and the environment in which municipal officials must operate.

While the sharply increased use of the professional administrator in Massachusetts over the past decade has relieved selectmen of many day-to-day administrative tasks, the importance of selectmen as political leaders of their town has grown. Selectmen need to have a grasp of complex and changing issues in municipal finance, land use regulation, and labor law. They need to understand how to deal with angry citizens and inquisitive reporters. They need to know how to affect legislation on Beacon Hill and Capitol Hill.

The state laws that govern selectmen remain the backbone of this handbook. Much of the new material was

added at the suggestion of selectmen and other town officials who wrote to the Massachusetts Municipal Association.

Where appropriate, the applicable chapter and section from the Massachusetts General Laws are cited in parentheses. In the format used by the *Handbook*, the citation MGL 141B refers to chapter 141B of the Massachusetts General Laws, and MGL 40:38 refers to Chapter 40, section 38.

The *Handbook* is intended as a guide to the law and not as a substitute for it. Although every attempt has been made to paraphrase the statutes accurately, selectmen should also consult with their town counsel before acting in any official capacity.

The table of contents has been devised to facilitate use of the book. The outline format, combined with the many cross-references found in the text, was used to enable readers to become aware of the many issues that can affect any one decision in town government.

This *Handbook* may be considered a companion to *Managing Small Towns*, edited by Brent A. Wilkes and published by the Massachusetts Municipal Association in 1986. Selectmen should find both volumes excellent resources as they strive to make their towns a better place to live.

WHAT IS A SELECTMAN?

You have just been elected to the board of selectmen, and you are ready to get to work on all those pledges you made during the campaign. The first order of business is fixing the roads. Then you can get started on that new fire station. Maybe next week you can begin trimming the town budget, increasing police patrols, lowering the tax rate, hiring a town planner, luring industry to town....

Sound familiar?

Whether you were recently elected or have been a selectman for several years, you probably remember the great expectations you had when you first ran. You will soon find out, if you haven't already, that the authority of a selectman is really rather limited. While you can make a difference in your town, your success will depend much more on your own leadership ability than on any powers inherent in the job.

1.10 A BRIEF HISTORY OF THE OFFICE

In the early years of the commonwealth, towns had no regularly elected town officials. Town meetings would periodically "select" prominent citizens to perform the business of the town between town meetings. Gradually, town functions became involved enough to require more consistent supervision. Borrowing the concept of councils from their English heritage, the colonists began to elect between three and nine "select men" or "townsmen" to serve for fixed terms. Beginning with Dorchester in 1633, towns in Massachusetts quickly adopted this unique form of government.

Initially, the powers and duties of selectmen differed from town to town. In general, selectmen were required to carry out and enforce the votes of the town meeting, but were additionally granted authority over specific administrative areas of town government.

During the late seventeenth century, the Massachusetts General Court began passing laws that shaped the character of the office. Selectmen were given significant authority over town finances, care of the poor, schools, admission of new residents into the town, roads and other public works, land regulation, local defense, and appointment of other town officials not elected by the town meeting. Selectmen were almost solely responsible for the content of warrant articles until 1715, when the General Court passed a law requiring them to accept articles on petition of ten or more property owners.

1.20 ORIENTATION TO THE JOB

Most people think of selectmen as the all-powerful political leaders of the town, at the top of the governmental pyramid. As you will soon discover, this is far from the case. Selectmen have less authority in their towns than the governor does in the commonwealth or the president does in the federal government—to say nothing of executives in the business world. While selectmen are the principal administrative officers of the town, other boards, including the school committee, the planning board, and the board of health, may wield at least as much authority over certain aspects of town government. Very often the board of selectmen does not have the only word—or even the last word—on what gets done in town.

As an individual member of the board, you have power that is even more circumscribed. Town government in New England is largely government by committee, and the legal authority of selectmen is limited to actions taken by the board as a whole. This structure, so different from what most people have experienced in their family, work, and social lives, is often difficult for new selectmen to adjust to.

If your sole interest is stirring up controversy, of course, you can be a maverick and attract lots of press coverage. But if you want to get things accomplished, you need to find some way to work with the other members of your board and with other boards in town. Your job is going to be especially difficult if you ran "against the board." But even if you are on friendly terms with the other selectmen, you need to become an expert in the political arts of compromise, courtesy, and logrolling.

Unless you have decided to limit yourself to one term, you also need to consider your re-election strategy. Are you going to try to build bridges to those who did not support you in the last election? Or are you going to concentrate on retaining the support you have? Are you going to try to do what the majority of the citizens want you to do on each issue? Or are you going to do what you think is right?

One way to make sure you don't stray too far from your election constituency is to set up periodic meetings with your "brain trust," those people who supported you during your campaign. They believed in you and invested in you. Keep listening to them about how you are doing.

1.30 LEGAL AUTHORITY

You can look in vain for the chapter in state law that describes the role and duties of selectmen. Your formal legal responsibilities are scattered throughout the statutes and in your town's bylaws and/or home rule charter. In addition, selectmen have general supervision over all matters that are not specifically delegated by law or by vote of the town to some other officer or board.

While the specific role of the selectman varies from town to town, all boards of selectmen have at least four important powers under state law: the power to sign warrants for the payment of all town bills; the power to make appointments to town office; the power to hire professional administrative assistance and town counsel; and the power to prepare the town meeting warrant.

1. *The power to sign warrants for the payment of all town bills.* The town treasurer may not issue a single check unless a majority of the board of selectmen sign a warrant of authorization (MGL 41:56). This affects the town's payroll as well as every provider of goods and services. Other boards, committees, department heads, and town officials may approve whatever payrolls and bills they wish, and certainly they should be required to do so before the warrants come to the selectmen, but the bills cannot be paid until the selectmen sign off on them.

Because of the enormity of this task, selectmen should rely on department heads to monitor day-to-day spending and make recommendations. However, the power to delay or veto expenditures gives the board of selectmen an important role in overseeing the operation of the town.

2. *The power to make appointments to town boards and offices.* The selectmen's appointing authority may be vast or limited, depending on how your town is organized. Other elected boards and committees, the town meeting moderator, and the professional administrator (if your town has one) all have some appointment responsibility. In most cases, however, the selectmen have the power to appoint more local officials than does any other person or group.

Again, this responsibility can be a massive one, for example, extending beyond the police chief to the entire police force. With so many other obligations, selectmen must necessarily delegate some of this power to department heads. It is important, however, that selectmen retain sufficient control to ensure that the appointment process is open, fair, and properly implemented at all times and at every level.

3. *The power to hire professional administrative help and town counsel.* For most towns, the complexity of running town government demands that there be a professional administrator to assist the board of selectmen, whether it be an administrative assistant, executive secretary, or town manager. While these positions must be authorized by charter or town meeting, it is the selectmen who do the hiring. This responsibility must be taken very seriously. Depending upon the power vested in the position, the professional administrator can have a significant impact both on your ability to do your job and on how your town is run.

Recently, school committees were authorized by statutory amendment to hire a lawyer to help with collective bargaining. Otherwise, the only legal representatives that a town has must be designated by the board of selectmen. This power to appoint town counsel is in effect the power to direct the entire legal affairs of the town. No town official can be defended, let alone can he or she bring suit through the town counsel's office, without the selectmen's approval. In most cases, documents that would bind the town legally must be approved by the town counsel. Regulating the use of town counsel by other town boards and officials is a delicate matter that requires good judgment and political skill.

4. *The power to prepare the town meeting warrant.* By state law, the selectmen are charged with calling town elections and town meetings and with publishing the warrant for them. In towns that have a finance or an advisory committee, that body makes recommendations to the town meeting on warrant articles. In all towns, however, the selectmen govern what appears in the warrant and the order of the articles.

While state law gives petitioners the right to demand a town meeting and to submit warrant articles, the selectmen actually issue the call, pick the precise date, time, and place, and in general organize matters up to the point that the moderator calls the gathering to order.

1.40 OTHER RESPONSIBILITIES

Apart from your strict legal responsibilities, your board can and should be the group in town that sets policy and strategic direction, coordinates the activities of other boards, and hears appeals and resolves problems that have not been settled at lower levels. If there is a professional administrator, the selectmen should work through him or her, or, in smaller towns, through department heads.

All too often, boards of selectmen confuse this broad policy role with meddling in the details of town government. They overstep their bounds by getting involved in the daily operations of a department; they fail to set sound written policies or do any long-range planning; or they are too quick to try to solve problems that should be handled by the administrator, by another board, or by a town employee.

There is more than enough for selectmen to do without getting bogged down in matters that are better delegated to someone else. Your time will be much better spent if you concentrate on making the whole of town government work. Some suggestions for reaching this goal include:

- Ask each town official to develop an action agenda for the year that can be shared at a group forum.
- Hold regular meetings of all town officials so everyone can keep up to date on what others are doing.
- Bring together town officials, department heads, and citizens' groups for organized discussions when major problems arise.

- Invite your state senator and representative to meet with your board and town organizations every few months for a give-and-take discussion.

1.50 LEADERSHIP

A big part of your role as a selectman depends on what you are willing and able to make of it. The ability to take the patchwork of laws and bylaws that comprise your job description and turn it into an action agenda can be summed up in a single word: leadership.

Leadership is the most important, yet the least understood, role of a selectman. It involves both personal leadership and, perhaps more important, leadership by your board as a team.

What exactly is leadership? It may be best understood by describing what good leaders do. Effective leaders take an upfront, visible role. They make decisions based on facts, data, logic, and empathy, even if these decisions are at times unpopular. They lead by example, not by words, raw power, or manipulation. They solve problems by looking for their root cause. Most important, they recognize the difference between the right to take action and the wisdom, on occasion, not to.

Most boards are made up of citizens whose philosophies, priorities, and personal ambitions differ markedly. The effective board devises ways to work cooperatively—not necessarily unanimously—toward broad common goals. Teamwork can be developed if you understand that your real power is not as individuals, but as a board of selectmen acting in concert.

Remember also that your behavior as a board sets a tone for the town. If you are constantly bickering, trying to embarrass each other, or frequently stymied by disagreements, your credibility with the public, other town officials, and town employees will be harmed. If, on the other hand, you consistently try to overcome your differences and seek to take new initiatives, it is far more likely that your lead will be followed.

1.60 THE FIRST DAY IN OFFICE

The moment you are elected, you should make arrangements to be sworn in. First, you should make an appointment with your town clerk for the swearing-in ceremony and then notify the news media. The next step is to become familiar with your new surroundings. Introduce yourself to all the town employees of whom you are the new boss. Find out what they do and what they expect of you. This is as delicate a process in town government as it is in the business world.

Next, begin educating yourself about your new position. Familiarize yourself with the services offered by the Massachusetts Municipal Association and the Executive Office of Communities and Development, and browse through the literature available about your new role. Determine whether your board has a written set of procedures and read them. The “learning stage” inevitable in any new job will be shortened if you make an early effort to figure out how things work.

Start planning how you will relate to your fellow board members, while recognizing they will be formulating plans of their own. You may want to sit back and listen for a while, especially if the other board members are veterans, or you may want to set your rules early.

Finally, you should set your sights on the end of your term, whether or not you plan to run again. On your last day in office, what do you want to be able to point to with pride? What do you need to do to consider yourself a success?

1.70 RECALL

Normally, selectmen either terminate their town service voluntarily or fail to be re-elected when their current term expires. More than fifty communities, however, have secured special legislation or have charter provisions that permit recall of local officials before their terms are up. Unless your town has specifically adopted such a provision, no town official may be recalled.

Recall is basically a negative election. It does not require those seeking to remove an official to establish the truth or merit of allegations against him or her. Recall provisions generally require those seeking the recall to file an affidavit with the town clerk, which contains the signatures of a certain number of registered voters and names the official to be removed and the grounds for his or her removal. Petitions then are circulated in the town. If the clerk certifies that the petitions were signed by a certain percentage of the voters (the number varies from town to town), a recall election is scheduled. In most towns, an official who survives a recall election cannot be the subject of another recall attempt for three or six months.

1.80 RESIGNATION FROM OFFICE

If you choose to leave the office of selectman for any reason, you must submit your resignation to the town clerk for it to be “official.”

2.00

OPERATING DAY-TO-DAY

2.10 OPERATING PROCEDURES

Asked whether his town meeting was governed by *Robert's Rules of Order*, a New England wag once replied: "Sure. Our moderator's name is Robert."

The same quip could be made about many selectmen's meetings. Most boards operate without written rules, according to their own distinctive procedures—often a combination of tradition and the personal style of the current chairman. While there should be plenty of flexibility in the way your board conducts its business, it is a good idea to set out your general operating procedures in writing so all members of the board understand the rules. Written rules of procedure for such things as the calling of meetings and the conduct of public hearings also help make sure that your board is complying with its legal requirements.

2.11 PREPARING THE AGENDA

In most towns, the responsibility for preparing the agenda for each selectmen's meeting falls to the chairperson of the board, often with help from professional staff. This task includes determining what issues will be up for discussion, what the order of items will be, and what will not appear on the agenda.

Selectmen should set a deadline by which they must receive all requests to have items appear on the agenda. Usually, the agenda is "closed" several days before a regularly scheduled meeting to allow time for it to be typed or printed and distributed. Usually, a chairperson will honor the request of any board member to have an item included on the agenda. If such a request is denied, however, the member can call for a vote of the board to instruct the chairperson to include the item.

Many boards begin by approving the minutes of the previous meeting. This practice is recommended because it requires that the minutes be prepared promptly, so that proper record-keeping does not fall behind. It also helps remind all members of where they left off in the town's business and what remains to be pursued.

It is good practice to group items on the agenda into three categories:

- Items about which people will be appearing before the board;
- Other items that require action by the board based on written material or reports of the board members themselves; and

- Informational material not requiring any action, but perhaps causing some discussion among the members of the board.

For the items that require action, some boards find that it helps to focus discussion if the chairperson, staff, or presenting party sets out the proposed or recommended action of the board under each item listed in the first two sections of the agenda. It is extra work, but it can help speed up meetings.

In recent years, many boards have tried to schedule their meetings to be more sensitive to citizens who appear before them. Some boards arrange the agenda so items that concern the greatest number of participants and observers will be taken up first, thereby inconveniencing the least number of people. Another approach is to consider the distance that people must travel to appear before the board. Those with the longest drive home could be given priority.

If the chairperson senses that an item on the agenda will require the board to go into executive session, and if the board regularly has observers at its meetings, it is a courtesy to schedule the executive session either at the beginning or end of the agenda, preferably the latter. The practice will keep citizens from cooling their heels—and feeding their anger—while they wait in the hall. (For more on executive sessions, see Section 2.22).

2.12 CONDUCTING A MEETING

Selectmen's meetings are usually not conducted according to parliamentary procedure, but rather in keeping with long-standing custom. The objective should be, both in appearance and actuality, to be fair, to maintain order, and to move the meeting along. Even if your meetings are informal, it is a good idea to agree upon *Robert's Rules of Order* or some other source as the final governing authority. If conflict arises over a procedural point, it is essential to have a commonly accepted reference to resolve it.

Some boards have a tradition of allowing the senior selectman to speak first on every issue. Others allow the newest selectman to start things off. Still others give preference to the selectman who suggested the agenda item or simply rotate the opening statement among board members. A technique which best serves the voting public is to hear first from those who are going to be on the ballot at the next town election.

*Exhibit 2.1***Sample Public Hearing Prodecures****Preliminary Procedures**

1. Proponents and opponents must set up any displays or graphic presentations prior to the actual start of the hearing.
2. Principal speakers must identify themselves to the chairperson prior to the start of the hearing.
3. Copies of the hearing procedures will be posted (or distributed) prior to the start of the hearing.

Hearing Procedures

1. The chairperson will open the hearing by identifying the purpose of the hearing and the rules to be followed during the hearing.
2. If testimony at the hearing must be given under oath, a five-minute recess will be taken to permit speakers to register with the meeting recorder. When the hearing is reconvened, the chairperson will render the oath in front of all present.
3. The basic format of the hearing will be:
 - Arguments: Proponents
 - Questions: Board of Selectmen
 - Questions: Public
 - Arguments: Opponents
 - Questions: Board of Selectmen
 - Questions: Public
 - Recess (five minutes)
 - Concluding statement/rebuttal: Proponents
 - Concluding statement/rebuttal: Opponents
4. No questions will be permitted until after the speaker has finished his or her presentation. Questions will be accepted first from board members and then from the public. All public questions will be addressed through the chairperson. Questioners will identify themselves to the chair, state their question, and specify to whom it is addressed. Any disagreement with answers is restricted to rebuttal statements.
5. At the completion of arguments, citizens may record themselves in agreement with the speaking side without making another presentation. (This provision is designed to reduce repetition.)
6. Prior to the close of the hearing, the board will announce what its next action will be.

Source: Town of Chelmsford

2.13 ROLE OF THE CHAIRPERSON

In most towns, the chairperson of the board of selectmen is chosen by the selectmen themselves, usually for a one-year term. The chairperson is usually elected by his or her fellow board members, although in some towns the position rotates among board members.

Being chairperson of the board does not mean forfeiting the right to vote or express yourself. However, your authority as a chairperson is such that you must be careful not to dominate the meeting. The powers of the chairperson—to prepare the agenda, to call the items, and to recognize others to speak—gives you enormous control over the way the meeting is conducted. A good chairperson will take extra pains to see that the other selectmen are given an adequate chance to be heard.

The greatest challenge facing a chairperson is keeping the discussion moving forward. You must strike a delicate balance by allowing members to express their views freely without getting bogged down in long-winded expressions of opinion. By addressing issues one at a time in an orderly fashion and by steering conversation away from irrelevant subjects or personality debates, the chairperson can help build consensus within the board.

Although the public and the press have a right to be present at any open meeting, they have no right to participate unless they are recognized by the chairperson. Nevertheless, it is important to make every effort to have each issue fully understood not only by board members, but by everyone present. The easiest way to accomplish this is to set aside a comment period before, during, or at the end of the regular meeting. Most boards prefer to leave the comment period until last. Set a time limit on how long people may speak and hold them to it. While an open “gripe session” can be positive, it can also get out of control unless order is closely maintained.

2.14 PREPARING THE MINUTES

Most towns now have a secretary or administrative assistant who takes notes at the regular selectmen’s meetings. These notes comprise the minutes of the meeting. The Freedom of Information Act requires minutes of all board meetings to be available to the public on request. Minutes serve three functions:

- To summarize what occurred, not to repeat the session verbatim;
- To record all votes precisely; and
- To assist in assembling an action agenda for the future.

In preparing the minutes, it is not necessary to record every question asked or to identify every person who participated in discussions. In general the results are more crucial than what led up to them; however, important discussion and controversy should be recorded.

If a board member feels short-changed by the reporting in minutes, one technique is to permit that person to append his or her own written report to the minutes, subject to the approval of the rest of the board.

2.15 CONDUCTING A PUBLIC HEARING

State laws and local bylaws often require selectmen to hold a public hearing before taking action on a certain matter. In some cases, the law is very specific about how much notice you must give before a hearing is held and how the hearing must be publicized.

The purpose of a public hearing is precisely what the name suggests: it affords the public the opportunity to be heard on a given issue—whether it concerns a liquor license or location of a telephone pole—before your board takes action on it. Public hearings tend to provoke heated disagreement. To keep the contentiousness to a minimum, it is wise to adopt standard procedures for the conduct of public hearings (see Exhibit 2.1).

2.15.1 Hearing Procedures

First, selectmen should decide on a scheduling process. Citizens requesting a hearing should be required to file a written request several days in advance. In most towns, public hearing requests are handled by the board's secretary or professional administrator, and are automatically placed on the agenda for the next regular board meeting. Some towns set a particular time for the hearing rather than simply a place on the agenda so that participants are not forced to wait.

Hearing procedures should be written and, if possible, posted or distributed prior to the hearing. Hearing procedures need not be detailed, but should establish basic ground rules for the conduct of the hearing. They should set forth the order in which people may speak and when questions may be asked.

The proposing or complaining side should be heard fully first, before the opposing or defending side is allowed to speak. When the latter group is allowed to speak, however, it should be accorded the same thorough privilege. Because hearings provide the main forum for debate on an issue, it is better not to set a strict time limit on presentations. A provision that limits statements to the board to ten minutes each, however, will give you the ammunition you need to cut someone off after fifteen minutes. As with any meeting, a good chairperson is the best insurance against having a productive discussion turn into a fistfight.

Selectmen are sometimes tempted to grill the witness like the prosecutor in a courtroom drama. Resist this urge, even if you are being filmed on cable television. If you have any questions of either side, these can be asked as the hearing moves along. The questions should be aimed at drawing out all the facts and clearing up points of confusion, however, and should not be argumentative.

After both sides have completed what they wish to say, it is appropriate to permit first those for and then those against to ask questions through the chair. No direct cross-examination of one side by the other should be permitted, as the selectmen are not usually trained in keeping such exchanges from becoming abusive.

Finally, both sides should be offered an opportunity to present rebuttals or concluding remarks. The selectmen may choose to render a decision on the spot or to take the matter under advisement until a later date.

2.15.2 Witnesses

Selectmen have the power to summon witnesses to attend hearings, testify, and produce books and papers (MGL 233:8). In the same manner as witnesses in civil cases before the courts, witnesses at hearings can be summoned, paid a witness's fee, and subjected to penalties for failing to appear.

It is not necessary that hearings be conducted under oath. If your board chooses to do so, however, it may swear in witnesses in the same way that witnesses are sworn in courts. Any member of your board may administer an oath to the witness. If a witness fails to appear, the chairman may issue a warrant to have the witness brought in (MGL 233:9).

2.16 CORRESPONDENCE

It is not required that every request for action or every piece of correspondence that a board of selectmen receives be taken up for discussion at a meeting. The chairperson should be trusted to know the important from the trivial to save everybody else's time. Other items can simply be put into a file for the board members to read through as they wish.

Outgoing correspondence may be generated by any member of the board or its staff. Some boards make it a practice not to let any mail go out until the board has an opportunity to review it at the next meeting. This system causes great delay and is probably not warranted, except with respect to certain delicate issues. Most of the time, the individual board members or those who are responsible for writing letters on the board's behalf should be permitted to do so without prior review. One way to make sure this authority is not abused is to keep file copies of all outgoing correspondence in a folder or notebook that can be reviewed by selectmen at their meetings.

2.20 ETHICS AND CONDUCT

2.21 CONFLICT OF INTEREST

Since 1962, the ethical conduct of selectmen and other public officials in Massachusetts has been governed by the Conflict of Public Officials and Employees Law (MGL 268A). Ideally, the "interest" of a selectman should be the good of the town, and the theory behind the law is that nothing selectmen do should interfere with their faithful service to the community. The law, interpreted and enforced by the state Ethics Commission, covers all municipal employees, whether elected or appointed, full or part-time, paid or unpaid. It also regulates the activities of former employees and partners of current and former employees. The purpose of the law is to ensure that your private interests do not conflict with your current public obligation. The law is purposefully broad to prevent you

from becoming involved in a situation which could result in a conflict of interest or even give the appearance of conflict. The Standards of Conduct provide a general code of ethics for all public employees and officials when faced with the potential or real overlap of private interests with official public responsibilities.

While selectmen guilty of extreme malfeasance may be subject to criminal action, most violations of the law result in civil penalties of up to \$2,000, which are levied by the state Ethics Commission. Towns may also sue town officials who violated the law for up to double the amount of financial advantage they gained by their improper actions. If a town official is found to have violated one provision of the law in connection with a town contract or action, the town may consider that reason enough for rescinding the contract or cancelling the action.

The key provisions of the law are summarized here, but it is a good idea to consult the Ethics Commission or seek an advisory opinion from your town counsel before engaging in any activity that might be questionable. Since April 1986, the commission has regularly reviewed town counsel opinions to see that they conform with the commission's interpretation of the law.

2.21.1 Financial Interests

The law assumes that your objectivity and integrity can be compromised if you act on matters in which you, a family member, or a close business associate have a financial stake. To discourage "self-dealing," the law (MGL 268A:19) prohibits you from participating in a "particular matter" in which you or any of the following have a financial interest: your immediate family, your partner or partners; a business organization in which you serve as an officer, director, trustee, partner or employee (including a non-profit organization); and any person or organization with whom you are negotiating or have any arrangement concerning prospective employment.

If your sister's company, for example, has bid on a town contract, the law bars you from participating in any discussion or vote on awarding a contract on that or any competing application. Your best course of action would be to leave the room during any discussion or vote concerning the matter. In a 1983 enforcement case, the commission found a selectman in violation of this section of the law by participating in the approval of a contract between the town and his wife's employees' union.

A "particular matter" as defined by law, includes almost any proceeding, application, request for determination, contract, claim, finding, decision, or controversy which might come before you. The law does not apply if the particular matter involves a determination of general policy and your interest is shared with a substantial segment of the town's population. For example, you are free to vote on raising or lowering property tax rates even if you are a homeowner, because your personal financial interest is shared with a majority of the citizens in the town.

Another exemption that selectmen need to be aware of concerns non-elected municipal employees. Under the law, a municipal employee may act on a matter in which he or she has a financial interest, provided he or she first discloses

the financial interest and the nature of the particular matter to his or her appointing authority—in some cases, the selectmen. If a municipal employee discloses such an interest to you, you are required to make a written determination that the employee's interest is not so substantial as to affect the integrity of his or her services.

The law (MGL 268A:20) prohibits a municipal employee from having a financial interest in a contract with the municipality or any agency of the municipality. In July 1983, for example, the commission found that a selectman violated this section of the law by having a financial interest in a printing firm that had contracts with the town. The Ethics Commission or your town counsel can advise you about the several exemptions to this section of the law.

2.21.2 What You *Can* Do

The law restricts municipal employees in general to holding one town position at a time. However, you may be eligible to hold another town office, and you may hold any number of other elected positions and get paid for them all. In addition, there is a specific provision for selectmen that allows you to work for a town agency and also serve as a selectman. You may fall under this exemption if:

1. You were a town employee before you became a selectman;
2. You are paid for only one job (whichever one you want); and
3. You don't vote, as a selectman, on matters within the purview of the agency you work for.

The law (MGL 268A:17) limits what you may do for someone other than the municipality you work for. While you are a municipal employee, you cannot be compensated by anyone else in relation to any "particular matter" in which any agency of the same municipality is a party or has a direct and substantial interest. Similarly, you cannot act as agent or attorney for anyone in such matters, even if you are not paid.

For example, if you are a lawyer in private practice, being a selectman precludes you from representing a client before any municipal agency in your town. In a 1982 case, the Ethics Commission found a selectman in violation of MGL 268A:17 by acting as the agent for a private party in connection with the sale of property that was the subject of foreclosure proceedings by his town.

The law also restricts the activities of partners of current municipal employees. Your partner may not act as agent or attorney for anyone other than your town in connection with particular matters in which you participate or which are subjects of your official responsibility. For example, under MGL 268A:18, your partner could not represent any company that is seeking a contract with the town that must be approved by the selectmen.

2.21.3 Standards of Conduct

General standards of conduct for public employees are outlined in the law (MGL 268A:23), which serves as a guide against misusing your official position. Essentially, the law prohibits you from using or attempting to use your official position to secure an unwarranted privilege or from giving a reasonable basis for the impression that you can be

improperly influenced in the performance of your official duties. In a 1983 case, for example, the commission found a selectman in violation of this section of the law by accepting golfing privileges at a local golf club, which were extended to him because of his town position. The law also prohibits you from disclosing confidential information obtained on the job and from accepting outside employment that could impair your independence of judgment in the exercise of your official duties.

2.21.4 Accepting Gifts

Selectmen, of course, are prohibited from accepting bribes, that is, payments made to influence the performance of your official duties. MGL 268A:2 of the conflict of interest law imposes civil and criminal penalties, not only on employees who seek or receive payoffs or kickbacks, but also on private parties who offer to pay them.

As a selectman, you must also be careful to avoid accepting anything that is offered because of your official position, not simply to influence you. The law (MGL 268A:3) makes it illegal to request or accept anything of “substantial value” from anyone with whom you have had or are likely to have official dealings, even if the motivation for the gift is to express gratitude for a job well done. This prohibition includes not only money, but gifts and privileges as well. In 1983, a selectman was found to have violated this section by accepting loans and loan guarantees from a developer whose site plans were subject to approval by the board of selectmen. (The courts and the Ethics Commission have interpreted “substantial value” to mean anything worth \$50 or more.)

2.21.5 “Revolving Door” Restriction

The law (MGL 268A:18) prohibits former employees from deriving unfair advantages by improperly using friendships and associations formed or confidential information obtained while serving the government. The law is not designed to prevent you from using general expertise that you developed while a municipal employee. Rather, it focuses on particular matters you worked on while a selectman.

If you participated in a particular matter as a selectman, you can never become involved in the same particular matter after you leave municipal service, except on behalf of your town. (Partners of former municipal employees are barred from working on the matter for one year.)

If you had official responsibility for a particular matter as selectman even if you did not actually participate in it, you may not appear personally before any municipal agency on behalf of a private party in connection with that matter for one year after leaving government. For example, if as a selectman you dealt with a company’s proposal to provide computer services for your town and you voted to award the company a contract, you cannot leave town government and work for the company on the same contract you voted on. You can, however, work for that company on other projects. And you could work for the company on town contracts proposed and awarded after you left the board.

2.21.6 Special Municipal Employees

Under MGL 268A:1(n), the board of selectmen may vote to designate certain employees “special municipal employees,” which gives them greater freedom under the conflict-of-interest law. Only those selectmen serving in towns with less than 5,000 population can give this designation to themselves. To be eligible for the designation, an employee must be unpaid, must hold a part-time position which allows him or her to engage in other employment during normal working hours or must have not been paid by the municipality for more than 800 hours during the previous 365 days.

Typically, the “special” designation includes members of boards and commissions and individuals serving part-time as consultants. All employees holding the same office or position, such as members of the historical commission, must be treated equally. In addition, the selectmen’s vote designating them must be specific—expressly naming the positions being included.

2.22 OPEN MEETINGS

The Open Meeting Law (MGL 39:23A-23C) is based on the premise that the public is entitled to see the process of government and not simply its result. In general, the public and the news media have the right to attend all your meetings. However, the law does provide seven specific exceptions to this rule that permit you to meet behind closed doors, in “executive session,” to discuss certain subjects. While the law does not limit what may be discussed or acted upon at any meeting, it does impose restrictions on the way in which meetings are called, conducted, and recorded. Any rules of procedure adopted by a board of selectmen must be in conformance with the Open Meeting Law.

As a newly elected selectman, you will be given a copy of the Open Meeting Law by your town clerk. So important is this law to the way you conduct your meetings that you will be required to sign a statement acknowledging that you received it.

2.22.1 What Is a Meeting?

Basically, a meeting occurs any time a quorum (usually a simple majority) of the members get together and discuss or consider any public business or policy over which the board has some jurisdiction or advisory power. It is against the law for a quorum to meet in private for the purpose of deciding or deliberating toward a decision on public business. A meeting must be public even if there is no vote taken or decision reached. In 1985, for example, a board of selectmen was found to have violated the Open Meeting Law by holding a closed executive session with its attorney concerning negotiations on a contract for rubbish disposal.

*Exhibit 2.2***Records Retention Schedule for Selectmen**

Source: Secretary of State's Office

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
	<u>ADMINISTRATION</u>		
9.1	Accounts and Receipts of Collector	c. 60, s. 94	After use.
9.2	Appeal to Appellate Tax Board	c. 59, s. 7	Permanent.
9.3	Appointment Certificate	c. 41, s. 23C	Three years after termination of appointment.
9.4	Appropriation forms for the payment of unpaid bills of previous years	c. 44, s. 64	Seven years provided a satisfactory audit has been completed.
	a. Certificate of Order		Same as above.
	b. Certificate of Delivery		Same as above.
	c. Certificate of Receipt		Same as above.
	d. Certificate of Services Rendered		Same as above.
9.5	Audit Report	c. 44, s. 39	Permanent.
9.6	Budget Estimates (Annual)	c. 41, s. 59	After use.
9.7	Cash Books		Following completion of satisfactory audit.
9.8	Civil Service Forms		Permanent.
9.9	Employment Applications		Permanent, if hired, otherwise two years.
9.10	Employment Service Record		Permanent.
9.11	Expenditures (estimated)	c. 41, s. 60	After use.
9.12	Insurance Policy		Seven years after expiration.
9.13	Minutes	c. 66, s. 6	Permanent.

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
9.14	Payroll Sheet (Departmental)	c. 41, s. 42	After use.
9.15	Receipts (estimated annual)	c. 41, s. 59	After use.
9.16	Reserve Fund Transfer Request	c. 40, s. 5	Seven years, provided a satisfactory audit has been completed.
9.17	Rules for police stations, lock-ups, jails, etc.	c. 111, s. 21	Until superseded.
9.18	Schedule of departmental bills payable	c. 41, s. 51	After use.
9.19	Special Town Meeting petitions	c. 39, s. 10	Permanent.
9.20	Treasury Warrants	c. 41, s. 60	After use.
	<u>BOUNDARY RECORDS</u>		
9.21	Boundary Triangulation points (as determined by State D.P.W.)	c. 42, s. 9	Permanent.
9.22	Description of obliterated town markers	c. 42, s. 10	Permanent.
9.23	Perambulation records	c. 42, s. 2 (as amended by C. 231, Acts of 1973)	Permanent.
9.24	Plan for Boundary Change	c. 42, s. 7	Permanent.

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
9.25	Proposal for Boundary Change	c. 42, s. 7	Permanent.
9.26	Ratification and acceptance of boundary change by General Court.	c. 42, s. 7	Permanent.
9.27	Receipts for registered notices to contiguous towns	c. 42, s. 2	After use.
9.28	Complaint against vicious or barking dog	c. 140, s. 157	Four years, if no litigation is pending.
9.29	Warrant to police officer, constable and/or dog officer	c. 140, s. 153	Four years, if no litigation is pending.
9.30	Warrant returned from police officer, constable and/or dog officer	c. 140, s. 152	Four years, if no litigation is pending.
<u>EDUCATION</u>			
9.31	Regional School District Annual Report	c. 71, s. 16	Permanent (one mint copy).
9.32	Regional School District Annual Audit Report	c. 71, s. 16E	Permanent (one mint copy).
9.33	Regional School District Planning Board Report	c. 71, s. 15	Permanent (one mint copy).
9.34	Regional School District Organization Proposal	c. 71, s. 15	Permanent (one mint copy).
<u>ELECTIONS</u>			
9.35	Notice of Vacancy in county office	c. 54, s. 143, 144	One year from filling of vacancy.
9.36	Notice of vacancy in General Court	c. 54, s. 141	One year from filling of vacancy.

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
9.37	Notice of vacancy in municipal, county or state office caused by retirement	c. 50, s. 6A	One year from filling of vacancy.
	<u>LICENSES AND PERMITS</u>		
9.38	Application for License		Duration of license plus two years if granted; two years if denied.
9.39	Application for Permit		Duration of license plus two years if granted; two years if denied.
9.40	License Book		Permanent.
9.41	Stubs		After completion of satisfactory audit.
	<u>LIQUOR/ALCOHOLIC BEVERAGES</u>		
9.42	Application for license.	c. 138, s. 15A	Permanent.
9.43	Application for Transfer of License	c. 138, s. 15A	Permanent.
9.44	Change of Location or manager position	c. 138, s. 15A	Permanent.
9.45	Letter of Approval to ABCC	c. 6, s. 44	Permanent.
9.46	Log Book (where applicable)		Permanent.
9.47	Renewal Affidavit	c. 138, s. 16A	Permanent.
9.48	Statement of Interest	c. 138, s. 15A	Permanent.

NUMBER	TITLE	STATUTORY REFERENCE	RETENTION PERIOD
9.49	Club License	c. 138, s. 12	Seven years after termination.
9.50	Common Victualer License	c. 138, s. 12	Same as above.
9.51	Druggist License	c. 138, s. 29	Same as above.
9.52	Innholder License	c. 138, s. 12	Same as above.
9.53	Retail Package Goods License	c. 138, s. 15	Same as above.
9.54	Tavern License	c. 138, s. 12	Same as above.
	<u>GENERAL</u>		
9.55	Annual Reports (departmental)		Permanent (one mint copy).
9.56	Correspondence		Three years, if of no informational or evidential value.
9.57	Jury Service Questionnaire	c. 234, s. 4	After use.
9.58	Deeds/Leases		Permanent.
9.59	Notice of strike or lockout	c. 150, s. 3	Four years, if no litigation is pending.
9.60	Report of Insurance Commissioner relating to Retirement Board	c. 32, s. 21	Permanent.
9.61	Report of Violations relating to weighing and measuring	c. 92, s. 32	Permanent.

2.22.2 Notice of Meeting

The officer in charge of calling a meeting is responsible for filing a notice of the meeting with the town clerk at least forty-eight hours (including Saturdays but not Sundays or legal holidays) before a meeting is to take place. Notice of the meeting, printed in “easily readable type” and including date, time, and place, must be posted within the same amount of time. In case of an emergency, defined as “a sudden, generally unexpected occurrence or set of circumstances demanding immediate action,” an open meeting may be held even though notice was not posted in time. Notice of an emergency meeting should still be posted as much in advance of the meeting as possible.

A chance meeting or social meeting of members need not be open with notice as long as no final agreement on a public matter is reached and as long as you can demonstrate that the meeting occurred by chance or for social reasons. However, the law states that a chance or social meeting shall not be used “in circumvention of the spirit or requirements” of the law.

2.22.3 Recording and Addressing Meetings

Any person in attendance at an open meeting may record the meeting by any means of sonic reproduction, including videotaping, provided that there is no active interference with the conduct of the meeting.

While anyone can attend your public meetings, they must have your permission to speak. If someone, without the permission of the chairperson, starts to speak, you should warn him or her that the behavior is out of order. If the person persists in disorderly behavior after being warned, the chairperson may order him or her to leave or to be removed.

2.22.4 Violations of the Law

Three or more voters, the district attorney, or the attorney general can sue your board or any member of it for failure to comply with the Open Meeting Law. A court hearing must be held “at the speediest possible” time after the complaint is filed in court. The burden of proof will be on you to show that the requirements of the law were met.

If it finds a violation, the court may, at the very least, order the board or board member to comply with the law at future meetings. Disobedience of such a court order could be punished as contempt of court. The court also has the power to invalidate any action taken at a meeting at which any provision of the Open Meeting Law has been violated. Invalidation is possible as long as the complaint was filed within 21 days after the board’s action was made public. In addition, if the court finds that an employee was discharged at an improperly closed meeting or hearing, it may order his or her reinstatement without loss of compensation, seniority, tenure, or other benefits.

2.22.5 Executive Sessions

An executive session may be held for *only* one of the following reasons:

1. To discuss the reputation and character, physical condition, or mental health (rather than the professional competence) of an individual. Professional competence alone is not a basis for an executive session. The person involved has the right to be present, to have a representative present to advise him or her and to speak in his or her own behalf. You must open the meeting to the public if the person involved requests it.

2. To consider the discipline or dismissal of or to hear complaints or charges brought against a public officer, employee, staff member, or individual. Again, the person involved has a right to appear, to speak on his or her own behalf, and to have a representative there to advise him or her. You must hold an open meeting if he or she requests it.

3. To discuss strategy with respect to collective bargaining or litigation if an open meeting may have a detrimental effect on the bargaining or litigating position of the town, to conduct collective bargaining sessions, or to conduct contract negotiations with nonunion personnel. In 1979, a state court of appeals ruled that a board of selectmen who refused to hold collective bargaining sessions in closed executive sessions committed unfair labor practices.

4. To discuss the deployment of security personnel or devices.

5. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.

6. To consider the purchase, exchange, lease, or value of real property, if such discussions may have a detrimental effect on the negotiating position of the town.

7. To comply with the provisions of any general or special law or federal grant-in-aid requirements.

Before holding an executive session for one of the above reasons, the selectmen must first convene in open session for which notice has been given. A majority of members must vote to go into executive session and the vote of each member must be by a roll call recorded in the minutes. The presiding officer must specify in the open meeting for which of the above reasons the executive session is being held. Before the executive session, the presiding officer must state whether the selectmen will reconvene in open session afterwards.

Your board must maintain accurate records both of open meetings and of executive sessions. At a minimum, the records must set forth the date, time, place, members present or absent, and action taken. All votes taken at an executive session must be recorded roll call votes and made part of the records of the executive session. According to the law, executive session records may remain secret *only* “so long as publication may defeat the lawful purposes of the executive session, but no longer.”

2.23 PUBLIC RECORDS

Most of the town's historical records are kept by the town clerk, but state law also requires each municipal board to keep its own business records. The board of selectmen, like other boards, is required by law (MGL 66:5A) to designate someone a clerk for the purpose of recording their actions. Selectmen are not required to keep a verbatim record of their discussions (MGL 66:5A), but they must record their votes and orders, and keep a general account of their proceedings. Selectmen are also specifically required by law to provide and maintain fireproof rooms, safes, or vaults for the safekeeping of all public records.

2.23.1 Keeping Public Records

Under the law, the secretary of state is responsible for seeing that all records of the state and its political subdivisions are properly preserved. To ensure uniformity, the secretary of state's office has published the *Municipal Records Management Manual*, which prescribes ways to manage and preserve municipal records and also contains retention schedules indicating which records should be kept and for how long (see Exhibit 2.2 for the retention schedule for records generated by boards of selectmen).

The law (MGL 66:8) specifically prohibits the destruction of any records without written approval from the secretary of state's office. To destroy records, selectmen should submit two copies of a letter substantially in the form of Exhibit 2.3 to the supervisor of public records. Towns may not destroy any original documents created prior to 1870 because of their historical value.

2.23.2 What Is a Public Record?

State law (MGL 4:7) defines public records broadly, including practically all information you, your agents, and employees might produce or receive. The formal definition includes books, maps, photographs, tape recordings, financial statements, and statistical tabulations. Letters, minutes of most meetings, and even videotapes would also be considered records. A huge volume of court cases has further defined what is and what is not a public record. Recent cases have held, for example, that payroll records, records of delinquent taxpayers, and lists of applicants for certain municipal positions are all public records.

2.23.3 Right to Inspect Records

Just as state law requires most of your meetings to be open to the public, so the law gives the public the right to inspect most of the records you produce and receive. Exceptions to this right are spelled out specifically in the law, often referred to as the Freedom of Information Act. If you withhold a record, however, the burden is on you to prove that the information it contains is covered by one of the exemptions to the public records law.

2.23.4 What Is Not a Public Record?

There are now about a dozen exemptions in the law for records that you are not required to disclose. These include:

- Records related solely to your board's internal personnel rules and practices (the board must show, however, that withholding these records is necessary to the proper performance of its duties).
- Personnel and medical files or information.

Exhibit 2.3

Sample Letter to Request Permission to Destroy Records

Letterhead
(Selectmen)

Date:

Secretary of State
Supervisor of Public Records
Archives Division—Records Management Section
Massachusetts Archives at Columbia Point
220 Morrissey Boulevard
Boston, MA 02125

Dear Supervisor:

This is to request authorization for the destruction of records on the Selectmen Records Retention Schedule as follows:

Schedule Number	Inclusive Dates
9.28	Jan. 1, 1963 to June 30, 1978
9.41	Jan. 1, 1980 to June 30, 1981
9.57	Jan. 1, 1976 to June 30, 1982

Estimated volume: 13 cubic feet.

Very truly yours,

(signature of legal custodian)

*Last state audit of town accounts satisfactorily completed as of Nov. 30, 1981.

Approved:

Supervisor of Public Records

Date

- Any other material related to a specifically named individual that would constitute an unwarranted invasion of personal privacy if disclosed.
- Certain memoranda or letters relating to policy positions that are being developed (not including reasonably completed factual studies or reports on which policy positions may be based).
- Investigatory materials that could prejudice effective law enforcement if released.
- Proposals and bids to enter into any contract or agreement (these are subject to disclosure, however, after they are opened publicly or after the time for receipt of bids has expired).
- Appraisals of real property acquired or to be acquired until either a final agreement is entered into or lawsuits over the appraisal are completed.
- The names and addresses of anyone referred to in applications for licenses to carry or possess firearms or firearms identification cards. The names and addresses of people who sell or transfer firearms, rifles, shotguns, machine guns or ammunition are also exempt from the public records law.

Be sure to refer to the law (MGL 4:7) for the exact wording of each exemption. If in doubt about whether a particular document is public, consult your town clerk, town counsel or the public records section of the secretary of state's office, which has the authority to determine whether a record is public.

2.23.5 Inspection of Records

If someone asks to see certain records and it is determined that they are public, you must permit them to be examined at reasonable times and without unreasonable delay (MGL 66:10). Under regulations issued by the secretary of state's office, requests to inspect public records must be fulfilled within ten days. Your town clerk is required by law to post a statement in town hall, notifying citizens that they are entitled to obtain certain public records for a fee.

As custodian of the record, you may not require anyone who wants to see a record to make a written request or to explain the reasons for his or her interest. You must make at least one copy of the public record for him or her, although you may charge a fee. The secretary of state's regulations contain a fee schedule for copies and the steps that a person can take if you deny a request for inspection.

2.23.6 Enforcing the Law

If you refuse to disclose a record, you may be challenged under one of two state laws. One law (MGL 39:23B) permits three or more registered voters, the attorney general, or the district attorney to file a complaint in court, requesting that you be compelled to maintain public records (this is the same statute that deals with enforcement of the Open Meeting Law). The other law (MGL 66:17C) contains similar language, but applies only to public records. In both cases, there is a presumption that the record sought is public and it will be up to you to convince the court otherwise.

Exhibit 2.4

The Big Story

Occasionally, your town may find itself the subject of a Big Story, an event so unusual or sensational that reporters from all over flock to cover it. Once the national media has converged, they are almost impossible to manage. Reporters will be relentless in seeking out information from any and all sources.

There are a few techniques, however, that can be used to make sure that you aren't spending your valuable time answering the same questions from dozens of different reporters. If the event is something the selectmen don't want to discuss in detail (your police chief has been arrested on drug charges, for example), your best approach is to prepare a written statement and circulate it promptly to the media. Make sure you have a person available who can read the statement on radio and

television without being tempted to add his own comments.

Other stories may be in your best interest to publicize. Perhaps a hurricane is threatening to hit your town. The news media offer an invaluable means of reaching the citizens of your town quickly to warn them of any danger. In these cases, it is wise to designate one or more people as official spokesmen for the town so that you can be sure the information that is given out is consistent.

Another effective technique is to hold regular media briefings at a central location such as town hall where there are phones available for reporters to call their editors and room for television crews to set up their equipment. Reporters are much less likely to stray into areas you'd rather they didn't go if they know they can get complete, reliable information by staying where they are.

2.30 PUBLIC RELATIONS

As a selectman, you are suddenly in great demand. Acquaintances stop you on the street to gripe about their sewer bill. The local radio station wants you to debate tax rates on a Sunday morning talk show. Your friends complain that you're never free for dinner anymore. Just as you are beginning to discover how little power a selectman really has, people you hardly know start asking you to fix this, change that, and outline the town's position on something else. Your ability to keep your head—and your temper—as people heap demands upon you is sometimes known as public relations.

Governmental public relations can be defined as the method and activities that promote a favorable relationship with the public. Public relations is one of the most misunderstood terms and perhaps one of the most misunderstood functions in government. Many people still think of public relations as being primarily concerned with press relations. In essence, however, the major function of public relations is to indicate performance by the public official for his or her constituency.

Good public relations occur at many levels. From your casual conversations at the grocery store to your contacts with the news media, what you say and do influences how people perceive you, your board, and town government as a whole. At the same time, people who are generally dissatisfied with town government often find the only way to express themselves is at the ballot box. If you want to stay in office, you need to be concerned not only with your own image, but how the image created by the rest of town government is affecting you.

2.31 STARTING OFF ON THE CORRECT FOOT

Public relations begins with the front lines. People often form their impressions about town government from town employees who are paid to answer telephones and deal face to face with the public. While you can't monitor the behavior of every secretary and school crossing guard in town, you can insist on courtesy by the selectmen's staff and stress the importance of good public relations in your meetings with department heads.

Start by introducing yourself to people in town hall who deal directly with the public. Give them a phone number and hours where they can reach you if they get a question they can't solve. Then call and drop by periodically to remind them of your interest and concern.

Some towns have experimented with using standardized forms for processing inquiries. When a citizen calls with a question or complaint, the person taking the call writes down the message on a triplicate form. The inquiry is then referred to the appropriate town employee for a reply, with copies retained for review by the department head or town

manager and the selectmen themselves. This system, though time-consuming, has the advantage of enabling selectmen to detect patterns of complaints and to follow up to make sure problems are being taken care of quickly and efficiently.

One of the easiest and best public relations tools is simply being accessible. Let the selectmen's secretary, the town manager, and other town employees who may get calls for you know when and where you can be reached. If you can't take calls at work, make sure your fellow selectmen and the appropriate town employees are aware of that, then set aside at least one night each week when you will be available for selectmen's business. At a minimum, make sure there is a number where messages can be left for you. Some boards find it useful to have the selectmen take turns being "on duty" to answer citizens' questions on regular weekdays and alternating weekends.

2.32 HANDLING COMPLAINTS

As a selectman, you symbolize town government and are therefore a sitting duck for people with a whole range of gripes. Many times, the complaints will be about a matter which is beyond your control, but this does not relieve you of responsibility to try to help.

Sometimes handling complaints involves nothing more than lending a sympathetic ear. Returning phone calls promptly and listening patiently can often prevent a minor complaint from escalating into a lawsuit against the town. At other times, you may be able to solve a person's problem with a quick call to the right town official or employee. If the complainant's problem cannot be solved by the town, say so immediately and suggest another place to call.

More troublesome are complaints about specific town officials or employees. It is important to have a written board policy for dealing with complaints about individuals so that everyone is treated fairly and evenhandedly. First, your board should make it a policy not to consider this type of complaint at an open meeting until you have discussed it with the party directly concerned and conducted a preliminary investigation. This gives you a chance to weed out frivolous complaints.

If the complaint requires further action, no complaint or criticism should be put before the board of selectmen until the party or parties complained of have been given prior notice and accorded an opportunity to be present to give their side of the story. This is the only way to avoid the appearance of a serial drama being played out before the board and in the media.

In general, when a complaint requires action, try to give the complainant a reasonable estimate of the time it will take you to solve it; then report your progress. On rare occasions, you may receive a threatening call or a call from a lawyer who may be planning an action against the town. In these cases, it is best to keep the conversation brief and consult your town counsel for guidance.

2.33 DEALING WITH THE NEWS MEDIA

Radio, television, and newspapers have become such pervasive forces in modern life that even the smallest town can't afford to be misinformed of what the news media are and how they work. Even if your town is regularly served only by a weekly newspaper and a radio station thirty miles away, you need to know how they can help you reach your constituents. And it's wise to remember that a sensational murder, a natural disaster, or the discovery of a lost art treasure in the public library could thrust your town into the national spotlight at any time. You need to be prepared to deal with a sudden invasion of reporters who want to take up your valuable time just when you are trying to solve your first crisis (see Exhibit 2.4).

2.33.1 What Reporters Want

Contrary to popular belief, the vast majority of reporters aren't out to do you harm. Their job, very simply, is to be inquisitive and skeptical and their objective is to get the

story—to get it right and get it now. Although you can't always influence what reporters choose to write about, you can help make sure that what they report is balanced and accurate by providing them with information they need. In all your dealings with the media, honesty is always the best policy. Give reporters a reason to trust you and they will usually treat you fairly.

By law, most of the decisions you make as a board will be accomplished at a public meeting. If you are lucky, your board meetings will be covered by seasoned reporters who understand town government better than you do. More likely, however, your board will be constantly breaking in cub reporters with little background in local government.

The only way to be sure that a reporter understood what was discussed at your meeting is to seek him or her out afterwards and offer to answer any questions. Some selectmen are so convinced that reporters will get the story wrong that they fail to give them exactly what they need to get it right. Describe in detail what a problem means in

Exhibit 2.5

Some Things to Know about Defamation

By choosing to become a public official, you have given up some rights you enjoyed as a private citizen. For one thing, your right to privacy is no longer sacrosanct. People may say things about you that are misleading, offensive, and just plain untrue. While you can still challenge any assault on your character, the likelihood you could prevail in court is much less than it was before you sought office.

A 1964 U.S. Supreme Court case (*New York Times Co. v. Sullivan*, 367 U.S. 254) drew a sharp distinction between a private and a public citizen for the purposes of defamation. In that case, the high court ruled that a public official must show not simply negligence but "actual malice" on the part of the person uttering or printing the defamatory statement. To prove malice, the official must show that the statement was false or made in "reckless disregard" of the truth. And the jury must be convinced there was reckless disregard by "clear and convincing evidence," a very high standard of proof.

Lawsuits for defamation must be filed within three years of the event that is alleged. Under the law, false statements that impute a crime to a public official could be considered defamatory. If a newspaper said, for example, that you took a kickback from a contractor, you might have grounds to sue. On the other hand, there are a number of derogatory terms that are generally not considered to be defamatory. Don't bother to sue, for

example, if someone calls you a "scoundrel" or a "deadbeat."

People are generally free to say anything they want about you in a judicial or legislative proceeding; and reporters are free to accurately quote those remarks. Whether this "privilege" extends to town meetings is still unclear in the law. What does seem clear is that one should hold one's tongue in selectmen's meetings. Under current law, privilege does not extend to meetings of administrative bodies.

Even if you win a defamation suit, there is no guarantee that you will collect any money. While the U.S. Supreme Court permits punitive damages in the area of libel (written) and slander (spoken) against public officials, the state of Massachusetts by statute does not (MGL 231:93). Under state law, the recovery for the plaintiff is limited to actual damages that are compensatory in nature, including the actual harm inflicted by the falsehood, mental suffering and anguish, impairment of reputation and standing in the community, and personal humiliation. State law also allows the jury to reduce the damages if the defendant has published a retraction.

Although you may be most concerned about what is said about you, you could potentially end up on the wrong side of a lawsuit by making unsubstantiated comments about someone else. Remember, it is easier for you to be sued for making statements about a private citizen than vice versa, because less rigorous standards are applied. If you have questions about what you may say in a public meeting, consult your town counsel.

Source: Kopelman, L., *Municipal Law, Municipal Forum* (Winter 1982).

dollars and cents and in terms of expansion and cutbacks in town services. And let the reporter know where you can be reached for more information.

Don't neglect the news media even if your board meetings are not routinely covered by a reporter. If a matter of public interest is going to be discussed at a meeting, call up your local editor and let him or her know. Press releases, press advisories, and printed statements are other options for notifying the media of an important action. Before you promise a newsworthy event, however, make sure you can deliver. Reporters want real news, not contrivances. Like the boy who cried wolf, officials who raise the media's false hopes won't be believed twice.

2.33.2 On and Off the Record

While it's fine to be friendly with members of the media, never forget that your job as selectman makes you a public official. That means anything you say at a meeting or in conversation with a reporter is presumed to be "on the record." You have no right to go "off the record" at a public meeting, nor can you expect a reporter to disregard any comments you make. You do have the right at a meeting to go into executive session, but only for the specific reasons stated in the Open Meeting Law (see Section 2.22).

At times, in private conversations, you may want to brief a reporter on the history of an issue, but not want to be quoted by name. This is perfectly acceptable, provided the reporter agrees to your terms *before the conversation begins*. To protect yourself and to eliminate confusion, you should first set out explicit ground rules with the reporter. Avoid using general terms like "off the record" or "for your background only," which often mean different things to different reporters. It is much better to tell the reporter in your own words how he or she can use the information. You might say, for example, "You can report this information, but don't identify the source," "Don't print

this without making some phone calls, and don't tell them who told you to call," or "Act as though you never heard this." Again, the key is to make sure the reporter agrees in advance to the terms you have set out.

If you have any doubt about whether a reporter intends to quote you, be sure to ask. When speaking for the record, choose your words carefully. While you may ask a reporter to read back your comments, don't assume you will be able to rephrase or take back things that you've already said. Also, never demand that a reporter read you his or her story before it is published. Reporters take freedom of speech very seriously and will resent anything that smacks of censorship. However, you should ask them always to send you copies of their stories.

2.33.3 "No Comment" vs. "I Don't Know"

A cardinal rule in successful media relations is to tell the truth, even if the truth is "I don't know." It is far better to plead ignorance than to be confronted later with a hasty statement that was less than 100 percent correct. When possible, avoid answering questions with a terse "no comment," which suggests you have something to hide. If your town counsel has advised you not to make public statements about a pending lawsuit, explain politely to the reporter that you have been advised by your attorney not to comment. If the board hasn't reached consensus on how to deal with a problem, tell the reporter that the issue is being discussed but that no decision has been reached. Then promise to let him or her know as soon as the issue is decided. There is no requirement that a public official answer every question put by a reporter (or anybody else, for that matter). When a reporter uses a question to try to make you say something that you don't want to say, you

Exhibit 2.6

Some Tips on Preparing Press Releases

1. Use good quality, 8 1/2 x 11 white paper. Use the town's letterhead only if the matter concerns legitimate town business.

2. In the upper left hand corner, include the name and the telephone number of a "contact" person who can be reached to answer additional questions.

3. Always state on the press release when the information may be printed or aired. Usually press releases are marked: FOR IMMEDIATE RELEASE. If you want the story held until a later time, write, for example: FOR RELEASE AFTER 6 P.M., June 5, 1988.

4. Always double space the copy, using one side only.

5. Try to keep the press release to one page, if possible. If it runs more than one page, type MORE at the bottom of each page except the last. At the end of the last page, type 30. That's newspaper jargon for "the end."

6. Put the most important elements of the press release in the first or "lead" paragraph.

7. Carefully proofread the release, making sure times are correct and names are spelled accurately.

8. If you send photographs, make sure they are good quality black-and-white prints. Identify the photographs with a caption typed on an adhesive label and attached to the back. Never write directly on the back of a photograph.

9. Always keep one copy of the release for your files.

UNDERSTANDING MUNICIPAL FINANCE

The richness, diversity, and tradition of Massachusetts local government is evident in the way municipal finance works. Many of the fiscal structures in towns had their origin in simpler times, and towns have devised a number of ways to keep up with changing times.

The biggest challenge in most towns is coordinating the activities of the various elected and appointed boards and officers involved in municipal finance. Some towns have addressed this situation by creating the position of finance director to oversee financial operations. While this may not be appropriate for all towns, it is important to examine your town's finance organization from time to time to make sure it is meeting the needs of the community.

Municipal finance involves raising revenues to perform necessary public services, administering these resources properly, and reporting on the results. At the heart of good financial management is good planning. This is accomplished through the annual budget, a capital program, and, in a growing number of towns, a long-range financial plan that includes revenue and expenditure projections. In addition, setting fiscal policies for such things as the issuance of debt and the accumulation and use of reserves can help set your town on a strong course for the future.

3.10 FINANCING TOWN GOVERNMENT

About seventy cents of every dollar spent by towns in Massachusetts is generated locally, and the single largest source of local revenues is the property tax. Cities and towns in Massachusetts have no general taxing power other than the property tax. Although the legislature recently passed a law authorizing cities and towns to adopt room occupancy and jet airplane taxes, this source of funding is not, except in a few cases, a significant alternative to property tax dependency.

While the property tax reductions and limitations brought about by the passage of Proposition 2½ in 1980 spurred a dramatic increase in the amount of state assistance provided to local governments, most of this increase was directed toward older, urbanized areas. Most towns, therefore, remain almost as dependent on the property tax in the post-1980 period as they were prior to Proposition 2½.

3.11 WHAT IS PROPOSITION 2½?

Concerned about the unbridled growth of the property tax, Massachusetts voters in 1980 approved a ballot initiative known popularly as Proposition 2½. The law (MGL 59:21C), which took effect in fiscal year 1982, derives its name from two sources. First, it sets an absolute tax levy limitation (known as the "primary" or "overall" limit) at 2½ percent of the townwide assessed valuation. Second, the law also limits the annual growth in the tax levy to 2½ percent per year. This is known as the "secondary" or "annual" limit.

The most significant requirement of Proposition 2½ is the limit placed on municipalities in levying real and personal property. The levy ceiling, the maximum amount of revenue that a municipality can raise through the property tax, is limited to no more than 2½ percent of the total full and fair cash value of real and personal property. When Proposition 2½ was approved, many cities and towns were taxing above the 2½ percent limit. The new law required communities exceeding the limit to roll back their tax levies 15 percent a year until they met the 2½ limit.

A number of other important provisions of Proposition 2½ affect local financial administration:

- A 2.5 percent annual limit on any other governmental unit's assessment on a community.
- The repeal of school committees' fiscal autonomy and of compulsory and binding arbitration for public employees.
- Prohibition of unfunded state mandates.
- A limit of twenty-five dollars per thousand dollars of value on motor vehicle excise.
- A rental deduction on one's personal state income tax.

All of these provisions are designed to complement the major levy limit restriction, and provide municipalities with some leverage to operate under the fiscal limitations of Proposition 2½.

Although Proposition 2½ places significant restraints on the revenue-raising capacity of municipalities, the law does contain provisions granting cities and towns flexibility in raising their levy limits to maintain local services. There are a number of ways in which the levy limit can be increased:

- There is an automatic 2.5 percent increase in each community's levy limit over the prior year's limit. The term, unused levy limit capacity, refers to the levy amount that can be raised in excess of the actual levy without requiring a vote to override it.

Exhibit 3.1

The Cherry Sheet

Determining Charges To Municipalities

The Cherry Sheet Charges in Capsule

For FY85 the cherry sheet consists of 22 different items charged to municipalities, including two county assessments, 14 state charges or assessments, three Metropolitan District assessments (excluding sewer and water connection charges) and three assessments for transportation authorities.

Assessments are levied in three ways:

1. those for which amount due is determined in whole or in part on the 'state tax apportionment basis'
2. those for which amount due is determined by a formula designed for the particular district, authority or program
3. those for which amount due is a charge for services rendered or costs incurred by the state

The so-called 'state tax apportionment basis' refers to equalized valuation. The apportionment is based on the fair cash value of all property subject to taxation in each town as reported biennially by the Commissioner of Revenue.

Assessment determined solely on the "state tax apportionment" (or equalized valuation) basis are:

- the state tax if one is levied by the General Court
- the county tax
- the county hospital deficit
- expenses of the Boston Metropolitan District

Equalized valuation and population are used to compute assessments for:

- air pollution control districts
- state recreation areas
- maintenance of Metropolitan Parks District
- Ipswich River Watershed District

Assessments based on specific formulas are:

- Mass. Bay Transportation Authority
- mosquito control projects
- the Metropolitan Area Planning Council
- Old Colony Planning Council

Charges are based on services rendered or costs incurred for:

- Metropolitan District Commission water and sewerage
- state audit of municipal accounts
- state examination of retirement system
- health insurance
- governmental retiree program
- motor vehicle excise tax bills
- special education

In addition to these assessments which appear on the cherry sheet, there are certain other assessments which, as stated earlier, do not. Special districts, such as regional school districts, levy their own assessments on member communities which must in turn include such assessments in the amount to be raised by taxation. Fire, water, sewer, and similar districts are authorized by the special acts which created them to levy taxes at their own rates to be collected by the member communities.

* These charges are capped by Proposition 2½ in that any increase in the total statewide assessment may not exceed 2.5% of prior year's assessment. Assessments to individual communities, however, may increase more than 2.5%. The total cap may also be exceeded for an approved service expansion.



The Commonwealth of Massachusetts - DEPARTMENT OF REVENUE

NOTICE TO ASSESSORS OF FISCAL 1985 ESTIMATED CHARGES TO BE USED IN DETERMINING THE TAX LEVY

GENERAL LAWS, CHAPTER 59 SECTION 21

NAME OF CITY OR TOWN

The following County Tax and State Assessments as estimated and the underestimates from the prior year must be used by the Assessors in determining the Gross Amount to be raised by Taxation. Over-estimates from the prior year must be used by the Assessors as Available Funds.

A. County Assessments

1. County Tax G. L. CH. 35, s. 31
2. County Hospital G. L. CH. 111, s. 85

Sub-total, County

B. State Assessments and Charges

1. Special Education G. L. CH. 71B, ss. 10, 12, 1972 CH. 766
2. Audit of Municipal Accounts G. L. CH. 44, ss. 41, 46A
3. State Supervision of Retirement Systems G. L. CH. 32, s. 21 (2)
4. Motor Vehicle Excise Tax Bills 1962, CH. 727
- Health Insurance G. L. CH. 32A, ss. 10B (c), 12:
 5. Elderly Governmental Retirees
 6. Retired Municipal Teachers
7. State Recreation Areas Outside Metropolitan Parks District G. L. CH. 132A, ss. 4-6
8. Mosquito Control Projects G. L. CH. 252, s. 5A
9. Air Pollution Control Districts G. L. CH. 111, ss. 142B, 142C, 1980, CH. 676, s. 1
10. Metropolitan Area Planning Council G. L. CH. 40B, ss. 26, 29, 1974 CH. 476
11. Old Colony Planning Council 1987 CH. 332
12. Ipswich River Watershed District 1986 CH. 682, 1971, CH. 16
13. Suffolk Co. Coop. Ext. Service G. L. CH. 128, s. 44A
14. Parking Surcharges, G. L. CH. 90, ss. 20, 20½

Sub-total, State

C. Metropolitan District Assessments

1. Metropolitan Parks G. L. CH. 92, ss. 54-59A
2. Metropolitan Sewerage G. L. CH. 92, ss. 5-8
3. Metropolitan Water G. L. CH. 92, ss. 26, 26A
4. Sewerage Connection Charges
5. Water Connection Charges and Entrance Fees
- 6.

Sub-total, Metropolitan District

D. Transportation Authorities

1. Massachusetts Bay Transportation Authority G. L. CH. 181A, ss. 8, 9, 1974 CH. 825, ss. 6, 7
Net Cost of Service - Jan. 1, 1983 - Dec. 31, 1983
After Commonwealth Credit \$
2. Boston Metropolitan District Expenses 1929 CH. 383, s. 12, 1954 CH. 535
3. Regional Transit Authorities G. L. CH. 181B, ss. 10, 11, 1973 CH. 1141
Net Cost of Service - July 1, 1983 - June 30, 1984
After Commonwealth Credit \$

Sub-total Transportation

E. Totals - All Assessments and Charges

F. Net Total Charges, FISCAL 1985

	Column 1 Estimates to be raised	Column 2 Prior Year Underestimates to be raised	Column 3 Prior Year Overestimates to be Used as Available Funds
A. County Assessments			
1. County Tax G. L. CH. 35, s. 31	\$	\$	\$
2. County Hospital G. L. CH. 111, s. 85			
Sub-total, County	\$	\$	\$
B. State Assessments and Charges			
1. Special Education G. L. CH. 71B, ss. 10, 12, 1972 CH. 766	\$	\$	\$
2. Audit of Municipal Accounts G. L. CH. 44, ss. 41, 46A			
3. State Supervision of Retirement Systems G. L. CH. 32, s. 21 (2)			
4. Motor Vehicle Excise Tax Bills 1962, CH. 727			
Health Insurance G. L. CH. 32A, ss. 10B (c), 12:			
5. Elderly Governmental Retirees			
6. Retired Municipal Teachers			
7. State Recreation Areas Outside Metropolitan Parks District G. L. CH. 132A, ss. 4-6			
8. Mosquito Control Projects G. L. CH. 252, s. 5A			
9. Air Pollution Control Districts G. L. CH. 111, ss. 142B, 142C, 1980, CH. 676, s. 1			
10. Metropolitan Area Planning Council G. L. CH. 40B, ss. 26, 29, 1974 CH. 476			
11. Old Colony Planning Council 1987 CH. 332			
12. Ipswich River Watershed District 1986 CH. 682, 1971, CH. 16			
13. Suffolk Co. Coop. Ext. Service G. L. CH. 128, s. 44A			
14. Parking Surcharges, G. L. CH. 90, ss. 20, 20½			
Sub-total, State	\$	\$	\$
C. Metropolitan District Assessments			
1. Metropolitan Parks G. L. CH. 92, ss. 54-59A	\$	\$	\$
2. Metropolitan Sewerage G. L. CH. 92, ss. 5-8			
3. Metropolitan Water G. L. CH. 92, ss. 26, 26A			
4. Sewerage Connection Charges			
5. Water Connection Charges and Entrance Fees			
6.			
Sub-total, Metropolitan District	\$	\$	\$
D. Transportation Authorities			
1. Massachusetts Bay Transportation Authority G. L. CH. 181A, ss. 8, 9, 1974 CH. 825, ss. 6, 7 Net Cost of Service - Jan. 1, 1983 - Dec. 31, 1983 After Commonwealth Credit \$	\$	\$	\$
2. Boston Metropolitan District Expenses 1929 CH. 383, s. 12, 1954 CH. 535			
3. Regional Transit Authorities G. L. CH. 181B, ss. 10, 11, 1973 CH. 1141 Net Cost of Service - July 1, 1983 - June 30, 1984 After Commonwealth Credit \$	\$	\$	\$
Sub-total Transportation	\$	\$	\$
E. Totals - All Assessments and Charges	\$	\$	\$

Column 1 + Column 2 - Column 3 =

\$

Basis of Apportionment

1. Equalized valuations¹
2. Equalized valuations
1. Initial cost of educating a school-age child of special needs in a state or private institution is paid by the Commonwealth. City, town or regional school district where a child would normally attend must reimburse the Commonwealth for each such child at an amount not less than its average per pupil cost for pupils of comparable age within the municipality or district.
2. Exact cost of auditing and for supplies furnished
3. Cost of expenses incurred
4. 15¢ for each bill forwarded to municipalities
5. 50% of premium cost, a portion of administrative expenses and payment of a subsidiary rate (surcharge) if municipality has elected to offer this coverage
6. Same as for Elderly Governmental Retirees
7. Average percent of valuation plus population^{*}
8. Equalized valuation and area sprayed
9. ½ in proportion to population and ½ to equalized valuations
10. 17.34 per capita (latest census less inmates of institutions). Amount per capita subject to change
11. 20¢ per capita
12. 50% on equalized valuation, 50% on population
13. Equalized valuations
14. Registry of Motor Vehicles fees charged when a municipality requests halting renewal of license or registration because of unpaid parking tickets. The city or town, in turn, collects the fee from the violator.
1. Average local percent of the district's population x 1 and equalized valuation percent x 2
2. Latest census and population equivalent of major industries (for MDC debt service). Contributing population and population equivalent of major industries (for MDC maintenance)
3. Charge at \$245 per million gallons consumed in prior calendar year
1. Various bases which include commuter counts, railroad rider count, equalized valuations and population
2. Equalized valuations (an older transportation region of 14 communities)
3. Members share of deficit. Remainder paid by state and federal funding

Notes

¹Equalized valuations as set biennially by Commissioner of Revenue

^{*}Population Based on 1980 U.S. Census

Formulas For Municipal And School Receipts

A

1. On a valuation set every five years by the Commissioner of Revenue Based on average tax rate
2. Based on local assessment of land at local tax rate
- 3.
- 4.
5. Assessors apply for reimbursement for abatements they have granted under state law.
6. An amount based on number of tax exemptions for the elderly in proportion to state total
7. Reimbursement to Boston Based on property value at time of acquisition

B

Chapter 70.

(Lines 1, 2, 3)

Aid for current educational costs in cities, towns, regional districts and county agricultural schools. The Department of Education calculates a Chapter 70 local aid percentage for each school district according to a formula based on the equalized valuation per capita local compared to state times the local support percentage.

The local support percentage is the share of school costs which must be raised by a district of average wealth. Each district will qualify for a Chapter 70 percentage of at least 15%.

The local aid percentages will then be multiplied by the latest state-wide expenditure per regular pupil. Each district will receive this amount for each of its regular pupils. Pupils in special, bilingual or occupational programs will qualify the district for 4.0, 1.4 or 2.0 times the regular grant. In addition, each district will receive an extra 2 times the regular grant for each disadvantaged pupil. No district will receive less than 85.6% of its 1979 Chapter 70 aid.

Ch. 71, Sec. 16D

(Line 15B)

Reimbursement of regional school district expenditures for instruction, tuition and administration cost (excluding transportation, community services, fixed assets, capital outlay and food for School Lunch Programs). This program is a bonus and covers costs already aided by other programs.

The rate of reimbursement is determined by a formula which takes into account the proportion of equalized valuation per school-attending child locally to state-wide and allows more for full regions than partial regions.

Payment of entitlement is made in the second year following the year in which the expenditure occurred.

Regions receive a separate estimated receipts sheet for Ch 70 and 71 which also includes items identical to number 7, through 14, and 17, 18, 21, and 22 on the form shown here.

8. School Aid
Aid to education comes primarily through Chapters 70 and 71
1. Chapter 70 See above
- 2, 3. Adjustments for previous years after audit
5. Applicable only to Boston and few other municipalities
6. Payment to those cities whose public libraries serve as regional facilities
7. Reimbursement of 50% of prior year's cost of transporting pupils to occupational programs outside their school districts
8. Reimbursement of cost incurred in prior year by cities and towns, limited to the difference between the total cost and a local share of five dollars per public and private pupils in town. Also 100% reimbursement of cost of transporting pupils for purpose of eliminating racial isolation or imbalance. No mileage limitation on this section.



The Commonwealth of Massachusetts - DEPARTMENT OF REVENUE

NOTICE TO ASSESSORS OF FISCAL 1985 ESTIMATED RECEIPTS
TO BE USED IN DETERMINING THE TAX LEVY

GENERAL LAWS, CHAP 58, SECT 25A, AND CHAP 59 SECT 23

NAME OF CITY OR TOWN

A. Reimbursement for Loss of Taxes:

1. Loss of Taxes, State-owned Land G.L. CH. 58, ss. 13-17B
2. Loss of Taxes, Flood Control G.L. CH. 58, s. 17
- Loss of Taxes, Abatements G.L. CH. 59, s. 5
3. Veterans Clauses 22A - 22E
4. Surviving Spouses and Others Clause 17
5. Blind Persons Clause 37
6. Elderly Persons Clause 41, 1977, CH. 967, s. 2
7. Government Center - Boston 1960, CH. 635, s. 8

Sub-total, Loss of Taxes

B. Education Distributions and Reimbursements:

School Aid Distribution G.L. CH. 58, s. 18A

1. School Aid G.L. CH. 70, as amended
2. Adjustment, G.L. CH. 70, Net 1979, 1980 and 1981
3. Adjustment, G.L. CH. 70, Net
- 4.
5. Retired Teachers' Pensions G.L. CH. 32, s. 20(2)(c)
6. Regional Public Libraries G.L. CH. 78, s. 19C
7. Outside Vocational School Transportation G.L. CH. 74, s. 8A
8. Transportation of Pupils G.L. CH. 71, ss. 7A and 37D
9. School Transportation G.L. CH. 71, s. 7B
10. Construction of School Projects, 1948, CH. 645; 1976, CH. 511
11. School Related Transportation G.L. CH. 71A, s. 8, G.L. CH. 71B, ss. 13-14
12. Special Needs Recreation G.L. CH. 71B, s. 11
13. Tuition for State Wards G.L. CH. 76, ss. 7 and 9; G.L. CH. 74, s. 7A
14. Residential School Tuition
15. Additional Aid to Public Libraries
- 15A. Additional School Aid
- 15B. Regional School Transportation

Sub-total, School Aid Distributions and Reimbursements:

Education Offset Items - Reserve for Direct Expenditures

16. Public Libraries G.L. CH. 78, s. 19A
17. Racial Imbalance G.L. CH. 76, s. 12A
18. Magnet Education G.L. CH. 71, ss. 37I and 37J
19. Equal Education Improvement Fund G.L. CH. 15, s. 11
20. School Lunch Program 1970, CH. 871
21. Elderly Lunch Program G.L. CH. 15, s. 1L, 1970, CH. 753
22. Apprenticeship Training Program G.L. CH. 74, s. 7B

Sub-total, Education Offset Items

Sub-total, All Education Items

C. General Government Reimbursements and Distributions:

1. Police Career Incentive G.L. CH. 41, s. 108L
2. Cultivation and Protection of Shellfish G.L. CH. 130, s. 20A
3. Water Pollution Abatements G.L. CH. 21, s. 37 (Offset Item)
4. Cost of Chemicals for Water Pollution Control 1980, CH. 510 (Offset Item)
5. Federally Aided Urban Renewal Projects G.L. CH. 121
6. Non-Federally Aided Urban Renewal Projects G.L. CH. 121
7. Veterans' Benefits G.L. CH. 115, s. 6
8. Highway Reconstruction and Maintenance 1974, CH. 825
9. Highway & Transit Fringe MBTA Communities 1974, CH. 825
10. Additional Assistance General Fund Appropriation to Local Aid Fund
11. Lottery, Beano, Charity Games G.L. CH. 29, s. 2D
12. Highway Fund G.L. CH. 81, s. 31; 1980, CH. 577, s. 8
13. Urban Redevelopment Corporation Excise G.L. CH. 121A, s. 10
14. Local Share of Racing Taxes 1981, CH. 558
15. M.B.T.A. Reimbursement for 1984 Assessment
16. City of Boston Funding Loan Act of 1982

Sub-total, General Government

D. TOTAL ESTIMATED RECEIPTS, FISCAL 1985

C

1. If municipality has accepted program, state funds 50% of a salary differential earned by completing courses approved by Board of Education
3. Reimbursement of abatements to firms for certain expenses to prevent water pollution
- 5., 6. The state assists with bonding expenses for urban renewal projects
7. 50% of amounts paid under state benefits program administered by local Veterans Agent
- 8., 9. Set amount distributed each year, the first to all and the second only to certain communities

10. The line item for any amount the legislature appropriates outside of standard categories listed
11. A community's share from state collections from these games. The formula is also used to distribute additional local aid
12. Ch. 81 distributes funds for highway construction and maintenance on a formula based on basic mileage and road use allowances minus an equalizing deduction times local road mileage. The "equalizing deduction" divides equalized valuation by local road mileage. Ch. 577 deals with the allocation of motor fuels revenues, allowing 15% of the total gasoline taxes collected to cities and towns and 11.76% of the special fuels excise revenues to cities and towns

13. Each city and town is entitled to receive each year the actual amount paid by urban redevelopment taxpayers for projects in the municipality. The proceeds are estimated based on prior year payments or other available information
15. Reimbursements to MBTA member communities who receive no MBTA service
16. Boston is allowed to borrow to cover court-order tax abatements. Certain taxes (the rooms tax in hotels built after August 1, 1982 and the Suffolk County deeds tax) must be dedicated to the debt

B

9. Reimbursement of part of costs incurred for transportation of pupils to and from school on public transportation. Limited to direct costs indirect cost of maintaining service of 20¢ a day per rider whichever is less. Riders must live at least 1.5 miles from school
10. Reimbursement to cities, towns and regional school districts for part of the cost of building construction and rehabilitation. For cities, towns, and partial regions, the grant will range from 50% to 65% of the total cost depending on local wealth. For full regions the grant will range from 60% to 75%, again depending on local wealth. The total reimbursement will be paid in annual installments over the life of the construction bond, usually 20 years. There are additional specific provisions and a formula for determining the rate of reimbursement
11. The reimbursement of a district's bilingual and special needs per rider costs will equal the local cost for a regular rider plus the difference between that cost and the special or bilingual cost, provided, however, that this difference does not exceed 110% of the state average difference
12. Reimbursement of half of the prior year's expenditures for approved recreation programs for school age children with special needs
13. Reimbursement of the prior year's educational costs for the education of children under the control of the Department of Public Welfare. The children must live in family foster homes or group care homes and attend public school in a district other than the district of their natural parents. The reimbursement will equal the full average expenditure per pupil in each eligible district
14. Reimbursement of prior year's expenses for the tuition of special needs pupils attending residential private schools. The department will pay no more than 60% of the total residential program and the school district shall pay no less than 40%. In cases where there is a day rate, school districts shall pay the day rate or at least 40% of the total cost of the residential program
15. Per capita amount
- 15B. See Ch. 71, Sec. 16B above. These items are more like grants. Maintained in special accounts
16. Per capita amount
17. Funding of current year's local expenses for projects approved by the Board of Education for voluntary programs to reduce racial imbalance. Pupils attending imbalanced schools in one community are transported to schools in other communities in the Boston and Springfield areas
18. Funding of current year's local expenses for projects approved by the Board of Education for voluntary programs to reduce racial imbalance. Magnet School projects are designed to draw pupils from racially isolated or imbalanced schools within a community or across school district boundaries
19. Funding of current year's expenses for projects approved by the Board of Education for programs to improve the quality of instruction in communities transporting pupils to eliminate racial imbalance. Boston, New Bedford, and Springfield are currently eligible
20. Reimbursement of part of the cost incurred in serving lunches to schoolchildren. This is the required state revenue match of 30% of 1981-1982 federal contribution for approved school lunches. Reimbursement is paid monthly following the submission of claims
21. Reimbursement of part of the cost of elderly lunch programs. Aid is limited to the difference between the cost of each meal and the fee paid by the diners. Aid is paid monthly following the submission of claims
22. Funding of the current year's local expenses for apprenticeship training programs

- A municipality can take advantage of growth in the tax base by increasing its levy limits by an amount equal to the prior year's tax rate times the value of new property. This provision covers new construction as well as structural additions and improvements, which increase the value by 50 percent or more in a year.
- A community can pass a general override by a municipal referendum to increase its levy limit permanently.
- A municipality can temporarily exceed its levy limits by passing one of three other types of overrides: exclusion of payments on specific debt issues, exclusion of capital outlay expenditures, or an elimination of required cuts (mandates). In general, override votes to exclude new debt issues have been successful, while override votes to raise the limit for general operating purposes have not.

Without these options, cities and towns would find it increasingly more difficult to maintain local services from year to year. Municipalities would have to rely on dramatic increases in state aid or would have to develop new fees and charges to pay for the delivery of services. With municipal costs ever rising, increased revenues are a must for cities and towns in the commonwealth to maintain financial stability.

An overview of Proposition 2½ would be incomplete without mentioning its override provision. The override allows cities and towns to reduce their annual levy limits. The law states that municipalities can limit the total amount of property taxes assessed to a level less than the maximum of 2.5 times their full and fair cash value. A majority of the local appropriating authority or a local initiative petition is required to place this question before the voters, who must then approve it by a majority vote.

3.12 ASSESSING PROPERTY VALUES

Because town government is so heavily dependent upon the property tax, the job of assessing property values is extremely important. Assessing is done by town assessors, who may be either elected or appointed (MGL 41:1, 24-30). Towns that accept the applicable section of law (MGL 41:21) may vote to have the selectmen act as the assessors.

State law requires that property be revalued to market value at least once every three years. This task is supervised by the Bureau of Local Assessment, part of the state Department of Revenue's Division of Local Services. The state must certify that the property is being assessed at 100 percent of market value before tax bills may be sent out.

Property assessment and revaluation does not affect the tax levy itself, but it often redistributes the tax burden. To make sure this is done fairly, the assessors must carefully evaluate the local real estate market. If all types of property increased in value equally, this would be an easy task. In fact, however, property values change at different rates. Property revaluation typically redistributes the tax levy among different types of residential property, different neighborhoods, and different classes of property—essentially, residential and commercial.

The assessed value of property as of January 1 serves as the basis for tax bills for the next fiscal year, beginning July 1. Property taxes are billed in two installments, due November 1 and May 1 or thirty days after billing, whichever is later. In revaluation years, towns often do not receive state certification in time to bill by October 1. In this case, state law allows towns to issue a first-half "estimated bill" based upon fifty percent of the prior year's bill. State law does not allow towns to issue estimated bills for the second half of the year, however.

Exhibit 3.2

What to Look for in a Grant Proposal

As a selectman, you may be called upon to review proposals that accompany grant applications in the name of your town. Listed below are some of the things to look for in a grant application.

1. *Rationale.* Are the project objectives clear and relevant to the goals of the grantor and the town? Does the proposal identify an important need, problem, or issue? Does the proposal demonstrate knowledge of the area that is pertinent, current and complete? Is the rationale supporting the project adequate to justify the cost?

2. *Project Design.* Does the proposal articulate a well-formulated plan of attack on the problem? Is the proposed approach practical and effective?

3. *Impact.* Is there evidence that the project outcomes will help the target audience? Does the character and size of the audience justify the dollars sought? Does the proposal fill a need that is currently unserved? Does the proposal have potential for adaptation to other settings?

4. *Cost-effectiveness.* Does the proposal make the best use of the money? Will improvements in public understanding justify the cost?

5. *Monitoring and evaluation.* Is there a good procedure for assessing the success of the project. Are there suitable plans for obtaining reliable and unbiased information on the effectiveness of the project?

If a revaluation effort has been particularly prolonged and messy, resulting in a large number of abatement requests, bills for the next fiscal year can wind up being delayed too. Your town's revaluation procedures could stand improving if more than ten percent of the parcels' owners file abatement applications. Even if the abatement requests are later found to be without merit, the fact that they were filed indicates a lack of public confidence and costs the town time and effort.

The best way to avoid this problem is to have a tightly monitored assessment program with a clearly established calendar. In addition, good public relations is important so that property owners understand the revaluation process and have faith in its fairness. Reviewing the number and type of appeals that reach the Appellate Tax Board is one way to evaluate how your town is doing.

3.13 SETTING THE PROPERTY TAX RATE

In 1978 (before Proposition 2½ was passed), an amendment was passed to the state constitution that permits property tax rates to be set by classes of property. This provision is often referred to as the "classification amendment." As selectman, you will have to vote on classification. The combination of this amendment, which requires that property be valued at full market value, and the later Proposition 2½, which limits the amount of the tax levy, has made the tax rate a flexible and important tool of local government fiscal policy. Within prescribed limits, the assessors have the authority and responsibility to determine, as a matter of policy, how the tax burden will be distributed among residential, open space, commercial, industrial, and personal property classes.

A public hearing is required before the annual property tax rate or rates may be set. The board of assessors is required to provide a report reviewing the full range of tax rate options.

The most common and easy option is to set a single rate for all classes of property. This is referred to as the "uniform rate," and means taxes will be distributed among the classes in the same proportion as the shares of taxable valuation.

An alternative is to set the tax rate on commercial, industrial, and personal property classes as a group at up to 150 percent of the uniform rate. This means that the share of the tax levy borne by these classes will be 50 percent greater than their share of the town's total taxable valuation. This lowers the share of the tax levy borne by the residential and open space classes. In no event, however, can the residential tax rate be less than 65 percent of the uniform rate.

As of fiscal year 1986, only a quarter of all cities and towns had chosen to use classified tax rates. The vast majority of municipalities set a single, uniform tax rate for all classes of property.

The law has a further provision allowing the tax on open space parcels to be discounted by as much as 25 percent. Only six towns had utilized this provision by fiscal year 1986. The cost of this discount is carried by the residential property tax.

Within the residential property class, there is a mechanism to permit the shifting of taxes from parcels of below-average value onto parcels of above-average value. Only five towns and three cities had opted to use this residential exemption as of fiscal year 1986.

3.14 STATE AID

Towns receive substantial aid each year from state government, but also must repay the state for certain costs and services. Estimates of state aid and assessments for the coming fiscal year are usually released by the state Department of Revenue in March, in time to be considered during budget deliberations. These estimates are often referred to as the "cherry sheet," because of the colored paper originally used by the state to report them (see Exhibit 3.1).

Cherry sheet estimates are based on the proposed state budget submitted by the governor and, in recent years, on a joint resolution of the legislature. These estimates are updated, usually in August, after the state budget has been adopted. The board of assessors is required to use the final estimate of receipts and assessments in preparing the data on which the tax rate determination is based. The August version is still an estimate, however, and actual receipts and assessments can, and frequently do, vary.

The Department of Revenue's Division of Local Services provides technical assistance and advice to municipal officials on a broad range of topics concerning local finance and taxation, as well as exercising supervisory and regulatory authority under various statutory provisions. The division consists of four bureaus. The Bureau of Accounts certifies tax rates for cities and towns and carries a prime responsibility under Proposition 2½ for ensuring compliance with property tax levy limits. It also supervises,

6. *Personnel and Institutional Resources.* Is the staff qualified to carry out the roles assigned to them? Are the services and conditions necessary to support the project activities available?

7. *Budget.* Are the costs of the project — salaries, services and other expenses — reasonable? Does the budget reflect an understanding of the magnitude of the task?

8. *Quality.* Does the conceptualization of the problem and the proposed solution show imagination and creativity? Are high quality resources to be used? Does the activity have intrinsic merit?

Source: Donald Levitan, *Guide to Grants*. Reprinted with permission.

assists, and monitors the financial management and accounting practices of cities, towns, counties, and special districts. The Bureau of Local Assessment supervises property valuation and assessment, oversees implementation of the classification amendment, and implements the Computer-Assisted Mass Appraisal (CAMA) system at communities' requests to improve local assessing practices. The Municipal Data Management and Technical Assistance Bureau is responsible for local aid distribution, the Municipal Data Bank, and coordination of technical assistance and management consulting reviews for communities. The Property Tax Bureau answers legal questions regarding municipal finance and taxation, and reviews and approves interpretations of the law and policy. The Division of Local Services also offers a wide range of training programs for local officials and issues reports on municipal finance.

3.14.1 Types of State Aid

State aid consists of almost fifty different distributions, parceled out under a variety of formulas. Most of these fall into one of the following categories:

- *Reimbursements.* The state pays your town for a portion of its actual expenditures on programs that the state wants to encourage. The state provides reimbursements, for example, for school building construction, school transportation, veterans' benefits, and certain property tax exemptions.
- *Needs-based Aid.* The state uses a variety of cost and revenue factors to determine each town's ability to finance the same level of services, then provides greater distributions to those that need it most in an effort to lessen disparities. Examples of needs-based aid are basic school aid (often referred to as "Chapter 70") and an item referred to as "additional assistance."
- *Formula Aid.* This category is also based on need, but it is calculated differently. Formula aid uses the "lottery formula," so called because it was invented to distribute the municipal share of State Lottery Commission proceeds to cities and towns. Lottery funds flow directly to cities and towns, without appropriation by the legislature.

The lottery formula is based on the number of residents in each town and its equalized valuation (EQV), which is the state's estimate of the full value of property, updated every two years. Towns with a smaller equalized valuation per capita get more money under the formula. The use of EQV in this and other distribution formulas as well as for certain assessments is coming under increasing criticism because the growth of property values has soared much higher than the growth of the tax levy limit.

- *Offsets.* The state provides funds for specific expenditures, not for general budget support. While these are often included as part of total receipts from the state, it is more realistic to think of offset items separately since they may not be used for broad municipal purposes.

3.15 OTHER SOURCES OF REVENUE

Besides state aid and the property tax, Massachusetts towns get their revenue from a variety of sources, including state and federal grant programs and local user fees. In recent years, federal aid to cities and towns has decreased rapidly, although federal funds are still available for certain projects. In addition, the state offers numerous grant programs for specific purposes. The Executive Office of Communities and Development (EOCD) can provide more information on federal and state grants.

User fees are direct charges for services provided, such as fees for water, sewer, recreation programs, electric lights, and municipal hospital services. The importance of user fees has increased since the passage of Proposition 2 ½. In the past several years, many towns have raised user fees to reflect the true cost of providing a service (in many cases, water and sewer fees have been raised). User fees must be used to offset the true cost of the service provided and may not be used to subsidize other municipal operations.

In addition, there are a variety of local receipts that towns collect each year. Often the largest of these is the motor vehicle excise, which is levied on all vehicles registered in Massachusetts. The excise rate is the same throughout the state and is set each year by the state revenue commissioner. Towns mail the tax bills to vehicle owners, but the bills are calculated and prepared by the state. Towns may also assess fines for some local infractions and charge fees for various licenses and permits. In most cases, however, state law sets a maximum amount that may be charged. Be sure to check the appropriate section of law before setting fines and fees (see also Section 4.60 on Licenses and Permits). Municipal revenue may also come from gifts and bequests, usually for specific purposes, and from the issuance of debt.

3.16 GRANTS

A significant portion of municipal revenue, for many communities, consists of "payments" from the state and federal government. A town may receive aid for a wide range of programs including housing, streets, public works, economic development, conservation, and management assistance. The majority of these payments, often called "intergovernmental transfers," come from the federal government in the form of grants-in-aid.

Grants are not free. They make many municipalities a ward of the federal government by bringing with them a family of hungry mouths: rules and regulations that the town must comply with as well as economic and administrative costs. Unless you plan for, administer, and manage grants carefully, they can become more of a bane than a boon to your town.

3.16.1 Sources of Grants

There are many sources of grants, and specific programs change often. In your quest for grants, make sure you “shake the money tree,” that is, be sure to consider the variety of grant sources that are available. Listed below are the main sources of outside funding:

- *Federal and state government.* Consult your town clerk or local library for information such as the Catalog of Federal Domestic Assistance and other reference books that list state and federal grant programs. Check with the state Executive Office of Communities and Development (EOCD) to see if there are grant programs available in areas where your town has a need.
- *Corporations.* Ask your board of assessors for a list of the twenty largest taxpayers in town. Corporations are an excellent source of funds since they can deduct such grants (either in dollars or in goods) from their taxes.
- *Philanthropic Groups.* The search for philanthropic or foundation funding is more complex than the previous two. Ask your local librarian for the name and address of the closest foundation library and visit it to gain further information.
- *Special Events.* Some towns stage special events to raise money. This fund-raising technique requires a particular skills. Check with other towns that have done this successfully.

3.16.2 Budgeting For Grants

Most grant programs require towns to submit a budget along with their proposal for what they plan to do with the funds. (See also Exhibit 3.2 on reviewing grant proposals.) Grant programs change their funding level every year, so it is important to determine how much your town can expect before you apply.

In submitting applications for grants, don't pad your budget, but try to anticipate which costs will rise: utilities, rent, salaries, telephones, insurance, and transportation all can be more expensive next year. Don't forget to incorporate auxiliary costs associated with such things as leases, evaluations, and audits. Grantor agencies are sometimes willing to make budget adjustments, but your chances are better if the grantor is alerted to the possibility early.

A well-prepared budget justifies all expenses and is consistent with the rest of your proposal. Are the salaries in the proposal similar to the salaries already being paid in your town? Have you considered the space and equipment requirements of new staff? Have you made allowances for higher insurance rates that may be required?

3.16.3 Managing Grants

Once your town accepts a grant, it must comply with a range of laws, rules, and regulations. Some towns have found it beneficial to create a centralized grants office that reports directly to the board of selectmen or through the town administrator. In smaller towns, this office can be staffed by one person who devotes only part of his or her time to this endeavor.

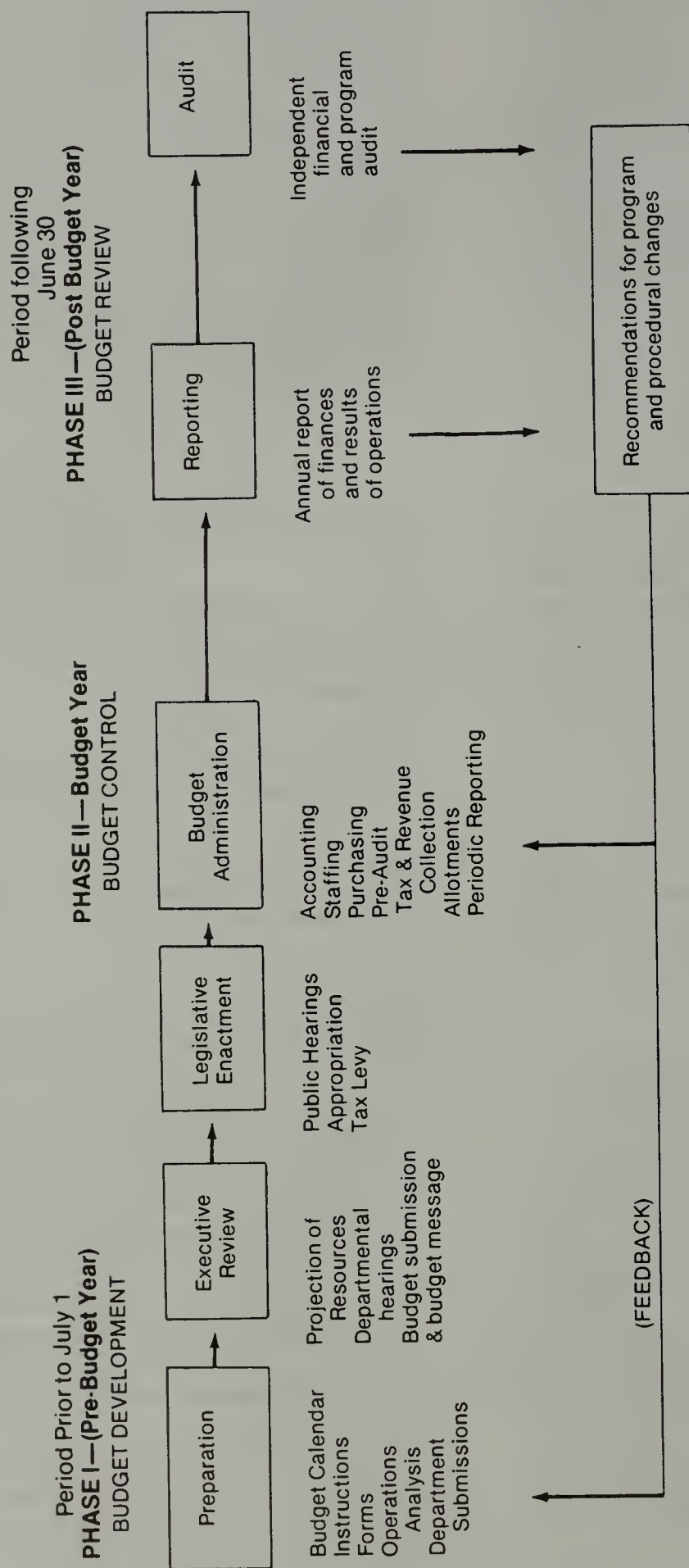
The grants office acts as a clearinghouse, supplying information about grants to various town departments and helping to shape and monitor grant applications that are submitted in the town's name. A grants office can also help ensure that the town is complying with grant requirements and that receipts of grant funds are coordinated with the town budget. (Exhibit 3.3 describes other functions of a grants office.)

Exhibit 3.3

What a Grants Office Does

- Solicits and collects information on various grants from all sources.
 - Maintains a grants library, including information on grant sources and resources, applications and reporting forms.
 - Distributes grants information to all town agencies as well as private groups that provide services to town residents.
 - Establishes uniform procedures for grant applications on behalf of all that seek funds in the name of the town.
 - Assists in grant preparation (rather than actually preparing the grant itself).
 - Reviews and comments on all grant applications that might affect municipal finances, services or residents.
 - Monitors fiscal and program compliance (without interfering with agencies administering the grants).
 - Periodically assesses the program and financial impacts of grant programs.
 - Insures that all grant records of programs and finances are retained, in accordance with town, state, federal and other grant rules and regulations.
-

Exhibit 3.4
Continuity of the Budget Cycle



NOTE: This Chart depicts the cycle for a single budget. Work on an upcoming budget usually begins as much as nine months before the start of the budget year, and the review period (reporting and auditing) can take three to six months after the close of the budget year. Thus, the entire process from preparation to audit can extend over two years.

3.20 THE MUNICIPAL BUDGET

The annual town budget is the cornerstone of municipal finance. The budget is a plan for the use of resources to meet service objectives. It details the revenues and expenditures proposed for the coming fiscal year. Frequently, municipal budgets focus solely on the “things” that will be bought and do not specify the results that are desired. The budget can, however, relate the purchase of things to the achievement of productivity and performance goals.

Town budgets must be submitted to town meeting (MGL 39:16). State law (MGL 41:59) requires that estimates of budget needs for the next fiscal year must be submitted to the finance committee or to selectmen in towns that do not have a finance committee not less than ten days before the end of the calendar year or ninety days before the start of town meeting. (See also Section 4.35 on the Role of the Finance Committee).

Normally, budgets of departments under the control of the selectmen must be submitted first to your board for review before going to the finance committee. Budget submissions must include an explanation of any changes requested from amounts appropriated in the previous budget. They must also include an estimate of departmental income to be derived from operations.

The planning phase should be governed by a “budget calendar,” an outline of when the individual steps of budget development must be commenced and completed. Budget development should be initiated by a set of instructions with standard forms issued to all department heads, boards, and commissions, and to any other unit that has authority to spend money. These instructions and forms can be issued by the selectmen, the finance committee, the town’s professional administrator, or the accounting officer. Budget forms should provide an opportunity for the department, board, or commission to describe its program, activities, work tasks, and objectives for the coming year in brief written form.

3.21 THE BUDGET CYCLE

The budget is a cyclical process tied to the fiscal year period. (See Exhibit 3.4). The fiscal year begins on July 1 for the state and for all cities and towns. The budget has several phases, outlined below:

Phase I—Planning and Enactment. During this phase, the selectmen set goals and overall budget guidelines and develop and issue forms and instructions to town departments. Departments prepare budgets and hold departmental hearings before the selectmen and the finance committee. Any required public hearings are held. Finally, the budget is enacted by vote at town meeting.

Exhibit 3.5

Presenting Your Budget Effectively

The manner in which the budget document is prepared can make a difference in how town government is perceived and how it operates. The Governmental Finance Officers Association of the United States and Canada (GFOA) has developed a “Distinguished Budget Presentation” program, which focuses on four basic functions of the budget:

- *The budget is a policy document.* The budget is a program to provide services, not simply to spend money. Policies affecting services should be explained.
- *The budget is a financial plan.* The annual budget is prepared within the context of the town’s overall financial condition and projections, which should be part of the presentation.
- *The budget is an operations guide.* The budget provides direction as to what will be done. It should describe the way in which the service objectives will be met.
- *The budget is a communications device.* A variety of steps can be taken to make the budget document more understandable and usable.

3.22 THE CAPITAL BUDGET

In addition to the operating budget, many towns prepare a capital budget that shows what capital expenditures are planned for the current fiscal year and how they will be financed. Capital items are considered to be infrastructure items, such as public works or a major rehabilitation of a municipal building. A capital item usually costs \$10,000 or more, has a long life-expectancy, and in most cases may be financed through a bond issue. Typically, the capital budget represents a slice of the town’s capital program, which sets forth planned capital expenditures over a five- or six-year period.

The purpose of a capital program is to project the major expenditures your town will need to make in the coming years and to set priorities among them. The capital program should establish a schedule of when expenditures should be made and how they will be financed. Capital programs should consider the initial cost of the project, the principal and interest costs of any debt, and the annual costs of maintenance and operation, that is, total lifetime costs (TLC).

3.30 MUNICIPAL DEBT

State law (MGL 44:7, 8) sets forth the purposes for which funds may be borrowed. The capital budget will typically set forth needs which may be financed through the issuance of debt. The job of management is to match these needs with the capacity to meet annual principal and interest costs of debt retirement. (See Exhibit 3.7).

A good method is to establish a target for debt service (that is, the principal and interest needed to retire a debt) as a percent of the budget or a percent of current revenue, or use a similar limiting device. Once a target level is selected, you can determine how much your town has left to pay off on past debt issues and project future interest rates to estimate how much new debt the town could issue in the coming years. Some portions of capital expenditures, of course, could be met from current appropriations, as evidence of the town's ability to meet its capital needs while controlling its debt burden.

While it is always possible to gain more room to issue debt by lengthening the number of years of an issue, this is seldom a good idea. Longer-term debt reduces your town's ability to respond properly to future needs. In addition, it is likely to result overall in a higher interest cost. The maximum maturity for municipal debt is prescribed by statute.

Towns that have issued long-term debt usually have prepared a document referred to as the "official statement." Its purpose is to disclose fully to potential investors the financial status and performance of your town and all relevant economic and administrative considerations. This document provides a wealth of information about your town and should be studied by every incoming selectman.

3.40 ACCOUNTING STANDARDS

Cities and towns in Massachusetts are required to prepare their financial statements according to standards maintained by the state Department of Revenue. Recently, the state established the Uniform Municipal Accounting System (UMAS), which brings state requirements closer to "generally accepted accounting principles," often known as GAAP.

GAAP is a financial system based on modified accrual accounting and financial concepts that are more specific than the system followed by most governments in the past. GAAP standards are published in a document called "Governmental Accounting, Auditing and Financial Reporting" (GAAFR), which is updated periodically.

The accounting industry strongly promotes the use of GAAP, as does the bond market, which can determine a town's cost of borrowing. In 1985, the two major governmental credit bureaus announced that they would penalize any government seeking to have their bonds rated that did not prepare their financial reports in accordance with GAAP. The same year, the state indicated that its Comprehensive Annual Financial Report would be prepared in compliance with GAAP within five years. Local governments are starting to follow suit.

Although UMAS is not identical to GAAP, it is a step on the road to GAAP, and a town accountant preparing statements under one set of standards can easily prepare an amended set of statements to meet the other standards. (For more on GAAP, see Exhibit 3.8.)

Exhibit 3.6

Single Audit Act

The federal Single Audit Act of 1984 (Public Law 98-502) establishes uniform audit requirements for state and local governments receiving federal aid.

If your town receives \$100,000 or more in direct or indirect federal financial assistance in any one fiscal year, the entire town books must be audited in accordance with the act and with any regulations established by the Office of Management and Budget. If your town receives at least \$25,000 but less than \$100,000, you have the option of complying with this law or with other applicable audit assistance requirements. If your town receives less than \$25,000 in federal aid, you are exempt from this law, but not from all other applicable federal laws and regulations.

The purpose of the audit is managing the federal funds according to federal laws and regulations. The audit covers all the town's financial operations, not just the department

in which the money is being used. The audit must determine and report whether:

- The financial statements of the town present its financial position fairly and are in accordance with generally accepted accounting principles; and
 - The town has internal control systems to provide reasonable assurance that it (and any subgrantee or subcontractor) is managing the federal funds in compliance with applicable laws and regulations. The law defines internal controls as: the plan of organization and methods and procedures adopted by management to ensure (1) that the resource use is consistent with laws, regulations, and policies; (2) that resources are safeguarded against waste, loss, and misuse; and (3) that reliable data are obtained, maintained and fairly disclosed in reports.
-

Authority to spend money is provided by an “appropriation” voted at town meeting. Appropriations may be very general (i.e., a sum for a department’s overall operation) or more specific (separate appropriations within a department for salaries, overtime, operating expenses, equipment, etc.). An “appropriation” is defined as the authority to make expenditures and to incur obligations for specific purposes, ordinarily limited in amount and as to the time when it may be expended. State law (MGL 40:5) specifies the purposes for which appropriations may be made.

In addition to appropriation controls, the budget may also impose personnel controls; that is, the number of authorized positions may be specified, and special stipulations may be made for the prior approval for the filling of vacant positions.

Phase II—Budget Administration. This phase includes such activities as accounting, personnel administration, revenue administration, and periodic reports (usually monthly or quarterly) to the selectmen, individual department heads, and the public.

Various techniques may be used to control expenditures and to make sure that the budget is not overspent. Some common approaches include dividing the budget into quarterly portions called “allotments,” centralizing purchasing activities, and using an encumbrance accounting system. Some towns use a less formal system in which the accounting officer reviews all purchase orders and sets aside the necessary funds for future payment, refusing to allow any orders that would put the accumulated spending and commitment in a particular budget account over the appropriation.

Some towns make it a policy to review vacated positions before rehiring to see if the position is really needed. Your town may also establish procedures for controlling the number of positions filled in a department at any one time.

Phase III—Reporting and Auditing. This phase includes the preparation of various reports for the town meeting, the public, the state, investors in municipal bonds, and various other entities. Historically, financial reports have focused on numbers—comparing expenditures and income against budget appropriations and revenue estimates. Increasingly, however, year-end reports are including information about program results, work measures, and productivity (see Exhibit 3.5).

Auditing is an independent review of the town’s financial performance, typically including an examination of the town’s financial controls and recommendations about how operating procedures could be revised. Audits may be performed by the state, by private accountants, or by an elected local auditor. The federal Single Audit Act of 1984 (Public Law 98-502) sets uniform audit requirements for all local governments that receive federal aid (see Exhibit 3.6). A growing number of towns are having audits performed annually.

The annual audit is carried out for the executive body, usually the board of selectmen. Therefore, your board should be involved in the selection of the auditor and in monitoring the progress of the audit. It is customary for the audit to include a separate “management letter” discussing the auditor’s findings with regard to any financial management weakness or needed improvements.

Exhibit 3.7

The Value of a Good Credit Rating

Most people recognize the value of a good credit rating. Without it, trying to borrow money when the need arises can be impossible—or at least very expensive. Yet a surprising number of towns do not have a credit rating or do not devote much attention to maintaining or upgrading the rating they have.

Some small towns that borrow infrequently are discouraged by the fee charged by credit rating agencies. While a good rating does have its cost, it can pay off quickly if your town eventually decides to borrow. The lack of a credit rating or the difference between a fair rating and a good rating can mean higher interest rates and interest expense for your town.

A good credit rating depends on a variety of factors, some of which can be achieved by good management on the local level. Moody’s Investors Service, one of the principal rating agencies, uses four key factors to determine credit ranking:

- *Debt factors.* How much debt does the town have? What are the terms? What about trends and future plans? What is the debt retirement rate?
- *Economic factors.* What are the characteristics of the community? Is there much commercial/industrial diversity? How susceptible is the town to regional and national economic changes? What is its capacity for growth?
- *Administrative factors.* What is the town’s management capacity? What is the political environment like? How much capital and long-term planning is being done?
- *Financial factors.* What is the rate of tax collection? How successfully has the town avoided short-term borrowing? Are there adequate reserves? How diversified is the town’s revenue base? What are its operating results?

*Exhibit 3.8***The World According to GAAP**

Today, more governments are accepting the financial system known as generally accepted accounting principles (GAAP). The following is an abbreviated outline of GAAP.

Legal Compliance and Financial Operation: A governmental accounting system must both comply with applicable legal provisions and determine fairly and with full disclosure the financial positions and results of the financial operations. If there is a conflict between the law and GAAP, as applied to governmental units, legal provisions take precedence.

Budget and Budgetary Accounting: An annual budget should be adopted by every governmental unit, and the accounting system should provide budgetary control over general governmental revenues and expenditures.

Fund Accounting: Governmental accounting systems should be organized and operated on a fund basis. A fund is an independent fiscal and accounting entity with a self-balancing set of accounts. It records cash and/or other resources together with all related liabilities, obligations, reserves, and equities, which are segregated for the purpose of carrying on specific activities or attaining certain objectives. Accounts relating to current assets and liabilities should be clearly distinguished from accounts relating to fixed assets and liabilities. For most funds, fixed assets should be set up in a separate self-balancing group of accounts known as the General Long-Term Debt Group of Accounts.

- The General Fund for all financial transactions not accounted for in another fund;
- Special Revenue Funds for the proceeds of specific revenue sources or to finance specific activities as required by law;
- Capital Projects Funds for the receipt and disbursement of monies used to acquire capital facilities other than those financed by special assessment and enterprise funds;
- Debt Service Funds for the payment of interest and principal on long-term debt other than special assessment and revenue bonds;
- Special Assessment Funds for special assessments levied to finance public improvements or services that benefit the properties against which the assessments are levied;

- Enterprise Funds for the financing of services to the general public where all or most of the costs are paid for by user fees;
- Intragovernmental Service Funds for the financing of special activities and services performed by a designated organizational unit for other organizational units within the same governmental jurisdiction;
- Trust and Agency Funds for assets held by a governmental unit as trustee or agent.

Every governmental unit should establish and maintain those funds required by law and sound financial administration. Because numerous funds make for inflexibility, undue complexity, and unnecessary expense in both the accounting system and the over-all financial administration, only the minimum of funds consistent with legal and operating requirements should be established.

Valuation of Fixed Assets: The fixed asset accounts should be maintained on the basis of original cost or estimated cost if the original cost is not available. In the case of gifts, the basis is the appraised value at the time received. Depreciation on general fixed assets should not be recorded in the general accounting records.

Basis of Accounting: The accrual basis is recommended for enterprise, trust, capital projects, special assessment and intragovernmental service funds; the modified accrual basis of accounting is defined as that method of accounting in which expenditures other than accrued interest on long-term debt are recorded at the time the liabilities are incurred, and revenues are recorded when received in cash (except for material or available revenues).

Classification of Accounts: Governmental revenues should be classified by fund and source. Expenditures should be classified by fund, function, organizational unit, activity, character, and principal classes of objects in accordance with standard recognized classifications.

Financial Reporting: Financial statements and reports showing the current condition of budgetary and proprietary accounts should be prepared periodically. A comprehensive annual financial report covering all funds and account groups of the governmental unit should be prepared and published. General purpose financial statements may be issued separately from the annual report.

3.50 FISCAL OFFICERS

The principal fiscal officers in your town are the treasurer, collector of taxes, and the town accountant, although in a number of towns the former two positions have been combined (MGL 41:1). These positions may be elected or appointed, depending on how your town is structured. A few towns have established the position of chief fiscal officer or finance director, either by designating one of the other fiscal officers to fill that post or by creating an entirely separate position.

The collector and treasurer and their assistants have a great deal of contact with the public, and many people's perception of town administration is based on their dealings with these officers. If your board is responsible for the appointment of these officers, it is important to consider the ability to deal with members of the public as one of the necessary qualifications for the job.

The *treasurer* (MGL 41:35) is responsible for the management of the town's funds. He or she receives and disburses all cash, invests temporarily available cash, issues and manages debt obligations, and manages banking relations. In addition, the treasurer may have a variety of other duties, including group insurance administration, payroll management, and supervision of the pension and retirement systems.

The treasurer is required by law (MGL 41:35) to post a bond each year for the faithful performance of his or her duties. The sum is set by the selectmen, but cannot be less than the minimum established by the state revenue commissioner.

The *collector of taxes* (MGL 41:38A) is responsible for the administration of local taxes, enforcing the tax laws to ensure a high level of voluntary payment. The collector maintains tax records for property and motor vehicle excise bills. If the collector of taxes also serves as the "town collector," his or her responsibilities also include collection of utility bills and all other types of department billings.

The *accountant* (MGL 41:55) functions as the controller of the budget, and frequently as the budget officer. He or she is the primary source of periodic reports on the town's financial position. Frequently, the town accountant will manage the municipal payroll and will serve on the local retirement board.

3.60 GLOSSARY OF FINANCIAL TERMS

Abatement—A complete or partial cancellation of a levy imposed by a governmental unit. Abatements may apply to tax levies and special assessments.

Amortization—Gradual elimination of an obligation, such as a bond, according to a specified schedule of times and amounts.

Appropriation—An authorization granted by a legislative body to make expenditures and to incur obligations for specific purposes. An appropriation is usually limited in amount as to the time when it may be expended. Only a town meeting or the school committee can authorize money appropriated for one purpose to be used for another. Any amount that is appropriated may be encumbered.

Any part of a "general" appropriation not spent or encumbered by June 30 automatically reverts to surplus. A "specific" or "particular" appropriation is carried forward from year to year until spent for the designated purpose or transferred by town meeting vote to another account.

Assessed Valuation—The value placed on a particular property by the local board of assessors for the purpose of apportioning the town's tax levy among individual property owners equitably and in accordance with the legal requirement that property be assessed at "full and fair cash value," as certified periodically by the state commissioner of revenue.

Audit—Work done by accountants in examining financial reports, reviewing compliance with applicable laws and regulations, reviewing efficiency and economy of operations and reviewing effectiveness in achieving program results. A basic audit examines solely the financial reports and legal compliance. An outside CPA audit is directed primarily toward the expression of an opinion as to the fairness of the financial statements and submission of a management letter. An auditor must be "independent" of the executive branch of government. A state auditor, private CPA, or public accountant, or elected auditor meets this test.

Balance Sheet—A statement which discloses the assets, liabilities, reserves, and equities of a fund or governmental unit at a specified date.

Betterments—An addition made to, or change made in a fixed asset which is expected to prolong its life or increase its efficiency; improvements.

Bond—A loan, typically over a year in maturity.

Bond Anticipation Note (BAN)—Short-term note of a government sold in anticipation of bond issuance. BANs are full faith and credit obligations.

Bond Issue—Generally, the sale of a certain number of bonds at one time by a governmental unit.

Budget—A plan of financial operation embodying an estimate of proposed expenditures for a given period and the proposed means of financing them. A budget may be “preliminary”—the financial plan has been presented to the town meeting—or “final”—the plan has been approved by that body.

Capital Budget—A plan of proposed capital outlays and the means of financing them for the current fiscal period. It is usually a part of the current budget. If a capital program is in operation, it will be the first year of that program.

Capital Program—A plan for capital expenditures to be incurred each year over a fixed period of years to meet capital needs (i.e., expenditures resulting in the acquisition of or addition to fixed assets).

Cash—Currency, coin, checks, postal and express money orders, bankers drafts on hand or on deposit with agent or official designated as custodian of cash and bank deposits.

Cherry Sheet—An annual statement received from the state Department of Revenue detailing estimated receipts for the next fiscal year from various state aid accounts and estimated charges payable by the assessors in setting the tax rate. Supplemental cherry sheets may be issued during the year, and there is no guarantee that the estimated receipts and charges appearing on them will not vary from actual receipts and charges.

Contingent Debt—Debt that is not in the first instance payable as a direct obligation of the governmental unit, but has been guaranteed as an eventual charge against its faith and credit; e.g., an industrial revenue bond guaranteed by a municipality.

Contingent Liability—Items which may become liabilities as result of undetermined conditions, such as guarantees, pending law suits, judgement under appeal, unsettled disputed claims, unfilled purchase orders, and uncompleted contracts.

Coupon—That part of a bond that represents interest payable. Printed on each detachable coupon is the total amount of dollars and specific day payable.

Crosswalk—A clear path linking separate considerations, such as crosswalk between a line-item and a program budget.

Current Yield—The coupon rate or percent of annual interest divided by the market price of a bond.

Debt Service—The cost, usually stated in annual terms, of the principal retirement and interest of any particular issue.

Default—Failure to pay principal or interest when due.

Effective Interest Rate—For a municipal borrower, the net cost of borrowing (expressed as an interest rate) after costs associated with a loan are accumulated and added to the nominal interest rate.

Encumbrances—Obligations in the form of purchase orders, contracts, or salary commitments that are chargeable to an appropriation and for which a part of the appropriation is reserved.

Equalized Valuation—The value of all property as determined by the commissioner of revenue biennially, using a standard of “full and fair value.”

Federal Aid Anticipation Note (FAAN)—A short-term loan issued to be paid off by a federal grant receipt. FAANs are full faith and credit obligations.

Fiscal Year—A 12-month period, commencing on July 1, to which the annual budget applies and at the end of which a governmental unit determines its financial position and the results of its operations.

Free Cash—Certified each July 1 by the director of accounts, this is the portion of the fund balance which is available for appropriation. It is not cash, but rather is approximately the total of cash and receivables less current liabilities and earmarked reserves.

Line-Item Budget—A budget focusing on categories of spending, such as supplies, equipment, maintenance, or salaries. See *Program Budget*.

Maturity—The date upon which the principal of a bond becomes due and payable.

Overlay—The amount raised from property tax levies in excess of appropriations and other charges. It cannot exceed 5 percent of the levy and is used to cover abatements and exemptions granted locally or on appeal.

Property Tax Levy—The amount produced by multiplying the assessed valuation of property by the tax rate. The tax rate is expressed “per thousand dollars” of assessed valuation.

Example: house valued at \$100,000
 tax rate = \$25 (per Thousand)

$$\text{levy} = \$25 \times \frac{\$100,000}{\$1,000} = \$2,500$$

Program Budget—A budget relating expenditures to the programs they fund. Its emphasis is on output. Also called performance budget. See *Line-Item Budget*.

Ratings—Designations used by credit rating services to give relative indications of quality.

Reserve Fund—A sum not exceeding five percent of the tax levy of the current year may be appropriated at an annual meeting to provide a fund for “extraordinary or unforeseen expenditures.” Transfers may from time to time be voted by the finance committee.

Revenue Bond—A bond payable from and secured solely by specific revenues and therefore not full and credit obligations.

Security—For Massachusetts municipalities, bonds or notes evidencing a legal debt on the part of the issuer.

Unreserved Fund Balance—Also referred to sometimes as the “surplus revenue account,” this is the amount by which cash, accounts receivable, and other assets exceed liabilities and restricted reserves. It is akin to “stockholders equity” account on a corporate balance sheet. It is not, however, available for appropriation in full because a portion of the “assets” listed as “accounts receivable” may be taxes receivable and uncollected. (See *free cash*).

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UNDERSTANDING HOW YOUR TOWN WORKS

4.10 THE KEY PLAYERS

If you do much travelling outside of New England, you are probably used to the quizzical looks you get when you tell a stranger you are a selectman. In most states where the mayor-council form of government is dominant, few people have even heard of the term. But in Massachusetts, the selectman form of government has been retained by the vast majority of municipalities. Only 39 of the state's 351 local governments are incorporated as cities, and five others have adopted, by home rule charter, a town council form of government.

Under state law, every town must elect a board of selectmen, a town clerk, and a treasurer, unless its charter or a special act of the legislature provides differently. In addition, every town must have an elected school committee and must, at a minimum, provide for the following functions: assessment of taxes, collection of taxes, auditing its accounts, health activities, road maintenance, care of public shade trees, preservation of the peace, and maintenance of records for all town meetings and selectmen's deliberations.

State law gives towns a fair amount of flexibility in deciding how to organize to carry out these functions. Some towns distribute administrative powers among a variety of elected boards and commissions. Other towns choose to let the selectmen take on additional roles such as board of health and sewer commissioners. Still others provide that certain boards be appointed and supervised by the selectmen.

Since the adoption of home rule, towns have had an infinite variety of options in the way they choose to organize town administration. Towns may consolidate, abolish, or establish new departments to handle different town functions. A few towns have used their authority to create a "strong" finance director or to combine fire and police activities in a single public safety department. Despite the opportunities for change under home rule, most towns have opted not to stray very far from their traditional organization.

Most of the officials and boards you are likely to encounter in your town are described in the succeeding chapters. The role of the school committee, for example, is described in Section 6.30, on Education. The role of the

planning board and conservation commission are described in Section 6.50 on Planning, Land Use Control, and Environmental Management. The board of health is described in Section 6.60 on Public Health. Professional town administrators and town counsels, which have assumed more importance in towns in recent years, have their own chapters. Here are a few key town officials whose duties do not fall neatly into any one chapter.

4.11 MODERATOR

The moderator is one of the few positions in town government that is elected. He or she is usually chosen for a term of one or three years, although in many towns the same person is re-elected as moderator repeatedly. The moderator presides over the town meeting and is responsible for its conduct. Moderators, for that reason, must be well versed in parliamentary procedure and familiar with town bylaws governing town meeting procedures. In some towns, the moderator has limited appointment powers.

4.12 TOWN CLERK

The town clerk is elected by the annual town meeting for a term of one or more years, unless the town has provided through bylaw or charter that the selectmen appoint the town clerk (MGL 41:1). Towns that accept the applicable section of law (MGL 41:19B) may give tenure to any clerk who has served for at least five years. Tenure means that the clerk may serve during good behavior until her or she reaches the age of 70, and may be removed only for just cause.

The town clerk records all votes passed at town meetings, and administers the oath of office to all town officers who apply to be sworn. In addition, the town clerk is the official record-keeper for most town records. He or she keeps track of births, deaths, and marriages, and has copies of all deeds and conveyances of town property. The town clerk also issues certain licenses, including marriage licenses, sporting licenses for hunting, fishing and trapping, and dog licenses. In addition, the town clerk maintains records of all licenses authorized or granted by the selectmen.

In most towns, the town clerk may also perform these duties: serve as member of the board of registrars; conduct

*Exhibit 4.1***Schedule of Licenses**

Listed below are licenses authorized by state law that may require action by selectmen. All towns do not necessarily use all the licenses listed below. In some cases, a vote of town meeting is required before towns may issue licenses for a specific activity.

<i>Authorizing Law</i>	<i>Name of License</i>	<i>Other Information</i>			
100:2	Auctioneers	Licensed by state; subject to special permit issued by selectmen	136:4	Dancing on Sunday	
140:177A	Automatic Amusement Devices		148:13	Explosives, blasting and storage	Public hearing required
140:58, 59	Automobiles (sale of new, used, or junk cars or parts)	Public hearing required for junk car license	140:185I	Fortune tellers	Limited to residents
10:38	Beano	Licensed by State Lottery Commission; subject to vote of town and approval of application by selectmen	140:122	Firearms, sale of	License issued by police chief or selectmen
85:11A	Bicycle registration	In towns with no organized police department	140:122B	Firearms, sale of ammunition	License issued by police chief or selectmen
140:191, 194	Boats	Rental of boats and bathing suits, if accepted by town	140:131	Firearms, gun permits	License to carry issued by police chief or selectmen
140:177	Bowling alleys, pool, and billiard tables	Public hearing required	140:21E	Food, beverages, sale at clubs	
166A:3, 6	Cable TV	Public hearing required	148:13	Gasoline, storage	
130:52	Clam diggers, shellfish	License subject to state control	101:3	Hawkers, peddlers, transient vendors	Licensed by state, subject to local regulation
140:2	Common victualler, restaurants, eating places		140:54	Junk dealers	If provided by local bylaw
140:185H	Dancing school	If accepted by town	138:11-15	Liquor licenses	Public hearing required
			140:23	Lodging houses, dormitories	
			140:21E	Lunch carts in public streets	
			85:18	Moving buildings in streets	
			148:56	Parking lots, open air lots	
			140:70	Pawn brokers	If provided by local bylaw
			140:188	Picnic groves	If section accepted by town
			140:177A	Pinball machines	Each machine needs a license

166:22	Power lines	
140:186	Roller skating rinks	
101:33	Sales by charities and veterans' organizations	
140:56A	Shooting gallery	Subject to bond being posted
85:8	Signs	Applies to signs that overhang public streets
140:181	Shows, theatrical events, public exhibitions	Hearing may be held
140:183A	Shows, entertainment at restaurants, bars	
140:21A, 21B	Soft drink sales	If provided by local bylaw
140:115	Steam engines melting furnaces	If provided by local bylaw
83:8	Excavations for sewers, drains	
136:4	Sundays, dancing, entertainment, games	
136:4, 7	Sundays, work of necessity	One-day permit issued by police chief or selectmen
40:22	Taxis	
140:47	Tea and coffee houses	If section accepted by town

elections and be responsible for purchasing and printing all election supplies and materials; oversee local compliance to campaign finance laws; issue construction approval certificates for subdivisions, special permits, site plans, and variances when respective boards fail to take action; and certify all appropriations voted at town meeting.

4.20 ELECTIONS

Election procedures in Massachusetts are complex and constantly changing. Fortunately, selectmen have only a limited role in running elections. Your primary responsibilities are calling elections, appointing election personnel from lists of candidates supplied by the major political parties, and designating voting precincts.

The conduct of state and national elections is regulated by state law (MGL 50-57). Local elections are governed by both state law and your town's charter or bylaws. Detailed information about all aspects of elections is found in a publication by the secretary of the commonwealth, *General Laws Relating to Primaries, Caucuses and Elections*, a compilation of state laws pertaining to elections. This volume, and annual updates, are available at the Statehouse Bookstore in Boston.

4.21 TOWN ELECTIONS

Towns may hold their annual elections on the same day or on a separate day from the business portion of the annual town meeting (see Section 4.30 on Town Meeting). As long as the election is held within thirty-five days of the town meeting, both may be called by the same warrant which is issued by the selectmen. Otherwise, two warrants are needed (MGL 39:9A). Most towns hold their annual elections a week or more before the town meeting. The date and time of both the annual meeting and the annual election are usually established by bylaw.

The majority of Massachusetts towns now use official ballots prepared by the town clerk in conformance with state law to elect local officials. Many towns have modified their election procedures so that candidates for local office may be nominated in advance of the election. Alternative nominating procedures include non-partisan caucuses, partisan caucuses (with or without official ballots), primaries, and preliminary elections.

4.22 BOARD OF REGISTRARS OF VOTERS

Most towns have a board of registrars of voters, which is responsible for registering voters, making local lists of residents, certifying nominating papers and petitions, processing absentee voter applications, and administering election recounts. The board consists of the town clerk and three other people appointed in writing by the selectmen (MGL 51:15). Registrars of voters must be appointed so that the members represent the two major political parties. However, boards may not have more than two members of the same political party.

A few towns have opted instead to create a board of election commissioners (MGL 51:16A), consisting of four members appointed by the selectmen for four-year terms. This board has all the powers and duties of a board of registrars of voters and all those powers and duties of the selectmen and town clerk that relate to caucuses, primaries and elections, except for giving notice of elections and fixing the days and hours of elections. Two members must represent each of the two major political parties, selected from lists of qualified voters submitted by the town committees of the two major political parties.

4.23 ELECTION OFFICERS

Every year before April 15, the selectmen must notify in writing the chairperson of the town committee of each political party that he or she has until June 1 to submit names of nominees to become election officers. The list may not contain more than eight names for each office to be filled. Supplemental lists may be filed at any time before appointments are made. However, selectmen must make appointments from the original list before a supplemental list is used (MGL 54:12, 13).

The selectmen must annually, between July 15 and August 15, appoint from the filed lists the following election officers for each voting place or precinct: a warden, a deputy warden, a clerk, a deputy clerk, two inspectors, and two deputy inspectors. Selectmen may additionally appoint two more inspectors, two more deputies, and as many tellers as are needed to count the ballots. If there are five or fewer precincts in your town, all with voting places located in the same building, your board may vote to have only one warden for all the precincts (MGL 54:24). However, there must be one clerk for each precinct.

Election officers must meet a number of qualifications, including being enrolled voters in the town. State law is also very strict about requiring that both major political parties be equally represented. If you deem it necessary, you may conduct examinations of nominees for election officer to determine whether they are qualified to hold office (MGL 54:12-13). Selectmen may also remove election officers under certain circumstances.

As a selectman, you may not serve as an election officer in a state or presidential primary or state election. However, you may serve as an election officer for a local election as long as you are not a candidate in that election.

4.24 VOTING PRECINCTS

Selectmen in towns with more than 6,000 residents are required to divide the town into voting precincts in 1995 and every tenth year thereafter (MGL 54:6). In smaller towns, this is optional unless the selectmen are directed to establish voting precincts by the town meeting. Voting precincts must each contain a similar number of inhabitants, but no more than 4,000 people.

Selectmen in towns that have voting precincts must designate the polling places for each precinct at least twenty

*Exhibit 4.2***Sample License Data Sheet**

Some towns have consolidated the laws, regulations and procedures governing the issuance of each license into a licensing manual for use by the selectmen or other licensing authority. Here is a sample of how this information can be organized.

Automobile dealer license-Class III-Junk Dealer

Authorizing law: 140:58

Fee: Not more than \$50.

Duration: Good for one year, ending December 31.

Hearing procedure: Applicant must apply to selectmen. A formal hearing is required. All abutters must be notified at least seven days before hearing.

Description of license: This license deals with someone whose principal business is the buying of second-hand motor vehicles for the purpose of remodeling, taking apart, or rebuilding the same, or the buying or selling of parts of second-hand motor vehicles or tires, or the assembling of second-hand motor vehicle parts.

Questions to ask: For which of the above uses are you seeking the license? What hours will you be operating? Where will your customers park? Are there objections from abutters? Is this a non-conforming use? If so, have you gone through the necessary zoning hearings?

Departments to consult: Ask the police chief to run a background check on the applicant.

Other licensing requirements: Applicant must send copy of application to the state registrar of motor vehicles if he or she has not held a license for one year prior to making application.

Quotas or moratorium on this type of license: None at this time.

Order of conditions: The selectmen may attach rules or order of conditions. Class III licenses and conditions may be further regulated through bylaw.

Penalties for violation: Upon any violations of order of conditions or state law, the license may be revoked or suspended after a hearing. A hearing is not necessary if the registrar of motor vehicles informs the town the license has been revoked. The town must automatically notify the registrar of a revocation.

Renewals: Licenses may be renewed each December.

Incident reports: None required.

Source: Town of Maynard

days before a state election and ten days before a special election, and must see that the polling places are prepared for voting (MGL 54:24). When a polling place in a precinct is changed from one location to another, the selectmen must post printed descriptions in public places in the precinct or notify each voter by mail.

The selectmen may make changes in voting precincts and must make changes when directed by the town meeting. Voting precincts may not be changed, however, if such a change would affect representative, senatorial, or councillor districts formed by the state, except for the purpose of town primaries or regular elections (MGL 54:7, 9A). When a town is divided into voting precincts or when precincts are changed, the selectmen must post a map or description of the new precincts in the town clerk's office and in three public places in each precinct. In addition, you must give copies of the map or description to the registrars of voters, assessors, and election officers, and each affected voter must receive notice through the mails from the selectmen (MGL 54:6).

Without action by the town meeting, but only to make voting for town meeting members easier, the selectmen in towns that have a representative town meeting may divide voting precincts into smaller sections. In this case, the selectmen must give prompt notice to the secretary of the commonwealth and, within twenty days, notify each voter in the district about where he or she may vote (MGL 54:7A).

4.25 VOTING PROCEDURES

In towns that use official ballots, the selectmen call elections with notices or warrants that specify the offices to be voted for and the time when the polls will be open and closed. Hours of voting must be within limits specified by state law (MGL 54:64). The type of voting equipment to be used is a determination to be made by the board of selectmen and approved by the secretary of state.

4.26 CAUCUSES

Town meeting may vote at any annual meeting to hold a caucus for the nonpartisan nomination of candidates for town officers. The two people receiving the highest number of votes at a town caucus are declared nominated. A town may rescind the vote to have a town caucus, but only after three years and only if the vote to rescind is held at least sixty days prior to the annual town meeting (MGL 53:121). Selectmen are also required to provide polling places, at the expense of the town, for political parties to hold their party caucuses (MGL 53:82(9b)).

4.27 OTHER ELECTIONS

The Massachusetts Constitution specifically requires that the selectmen preside at elections for state senators and for the governor. In addition, selectmen must call elections to fill certain vacancies in office. If there has been a failure to elect a representative in Congress or if a vacancy exists, the selectmen must call an election upon receipt of a precept from the governor (MGL 54:140). Similarly, the selectmen must call elections for state representative on receipt of a precept from the speaker of the House (MGL 54:141); for district attorney, clerk of the courts, register of probate, or sheriff on receipt of precepts from the governor; and for county treasurer or register of deeds on receipt of precepts from the county commissioners (MGL 54:143). If there is a vacancy in the office of county commissioner, the county board of examiners, consisting of the judge and register of the probate court and the clerk of the courts, will issue a precept to the selectmen for an election to fill the vacancy (MGL 54:144).

4.30 TOWN MEETING

A key feature of town government in Massachusetts is the town meeting, which is the town's legislative body. The virtues of this New England institution have been extolled in almost every book ever written on government in America—and rightly so. The town meeting is at the foundation of the democratic tradition, providing an equal opportunity for all citizens to participate in the decision-making process. Anyone who has once attended an open town meeting, however, will have a more realistic view of this time-honored body. Town meetings are often sparsely attended or dominated by interest groups. When a controversial issue is up for discussion, they can be unwieldy affairs, dragging on for hours and stretching the patience of all in attendance.

While it is the moderator who officiates at the town meeting, the selectmen may influence the conduct of the town meeting in various ways. By producing a clear and well-organized warrant and by preparing clear and complete explanations of each warrant article, the selectmen can help give focus to the business of the meeting.

Exhibit 4.3

Methods of Bidding on Construction

Unit Price: All bidders submit a cost for each unit of the different kinds of work required by the project, for example, excavation at so much per cubic yard, rock excavation at so much per cubic yard, installing protective trench walls or "sheeting" at so much per square foot, and so on. The low bidder is the one with the lowest cost based on the assumed total work units times the various unit prices. Unit price contracts are commonly used where the final work quantities are difficult to estimate accurately in advance, as in underground work.

Lump Sum: All bidders submit a single, overall price for doing all the work, without separating out the cost of doing particular operations. Lump sum contracts are commonly used where the final quantities can be calculated fairly precisely, as in conventional building construction.

Cost Plus: All bidders compete only on the percentage for overhead and profit they want over and above what they will be paid for the actual costs of construction. Cost-plus contracts are commonly used where the project is unusual and bidders have no experience upon which to base estimates of the cost of operations.

4.31 SELECTMEN AND TOWN MEETING

The relationship between the selectmen and town meeting is sometimes compared to that between a governor and the legislature or the president and Congress. The comparison is not quite accurate, however, since the selectmen don't have the power to veto actions of the town meeting.

On the other hand, the town meeting, like other legislative bodies, potentially has a great deal of control over department heads. The town meeting can, for example, investigate town problems or administration through its finance committee, other standing committees or special ad hoc committees. On the basis of findings and recommendations by such committees, or on the petition of ten or more local voters, the town meeting may adopt resolutions and bylaws establishing new town policies or initiating new programs (MGL 39:10). The town meeting can also, within certain limits, reorganize town agencies and control the development of your town. Probably the most important power of town meeting is the power of the purse. By appropriating or withholding funds, the town meeting can force, prevent, or influence actions by town officials and departments.

4.32 PREPARING THE WARRANT

The most significant function of the selectmen in the town meeting comes before the meeting ever begins, in the preparation of the warrant (MGL 39:10). Every town meeting must be called by a warrant that states the time and place of the meeting and lists all the items of business to be acted on at the meeting. The warrant is composed of articles outlining each subject on which the town meeting must vote.

Selectmen insert articles in the warrant on their own initiative, by request of another town committee, or, in the case of the annual town meeting, by written petition signed by at least ten voters. To have an article included in the warrant for a special town meeting requires a petition signed by one hundred voters or ten percent of all town voters, whichever is fewer. A petition is valid only if it includes signatures and street addresses of the required number of registered voters. The selectmen must have the petition checked by the board of registrars of voters or the board of election commissioners to see that it is in order.

The selectmen are in charge of “opening” and “closing” the warrant. When a town meeting is called, the warrant is considered to be “open.” To allow for the warrant to be printed or typed, the selectmen may vote to refuse to accept articles after a certain date, and the warrant is “closed” as of that date.

Only those articles of business that have been included in the warrant may be legally acted upon at the town meeting. The selectmen should take care when preparing the warrant to be sure that it is clearly worded and that it contains a complete description of all subjects to be taken up at the meeting. A well-prepared warrant, like a good agenda, will do more to ensure that the meeting goes smoothly than anything else except the moderator’s skill.

The precise format of the warrant will, of course, differ from town to town. Some town warrants, for example, provide a separate article for the appropriation of money to each town department, while most lump the appropriation of money for all town expenses under one omnibus budget article. At a minimum, similar articles should be placed together so that the town meeting does not cover the same ground more than once.

The warrant must be signed and issued by the selectmen at least seven days before an annual meeting and at least fourteen days before a special town meeting. The selectmen direct the warrant to the constables or to whomever is required to give notice of the meeting to the town. The way in which notice is given may be prescribed by the individual town, either through bylaws or through town meeting vote, or it may be done in any manner approved by the attorney general.

The majority of selectmen in office are ordinarily required to call a town meeting. However, if the selectmen unreasonably refuse, a justice of the peace may call a town meeting on the written request of one hundred registered

voters or ten percent of the total voters (MGL 39:12). If for any reason there are no selectmen remaining in office, the town clerk may call a meeting.

4.33 WHEN TO CALL A TOWN MEETING

Every town in the state must hold at least one town meeting each year. The annual town meeting is held in February, March, April, or May, unless some other month is designated by special law or by a provision in the town’s home rule charter. Most towns choose to divide the annual town meeting into two parts to be held on separate days: one for the election of town officials and one for the transaction of other business. If the two meetings are held within 35 days of each other, they may be called by the same warrant, but otherwise must be called by separate warrants (MGL 39:9A).

Exhibit 4.4

Request for Proposal

Here is an outline of what should be included in a Request for Proposal for consulting services:

- Purpose/objectives of service (clearly stating what you want)
 - Background information (events, conditions leading to decision to obtain consultant)
 - Desired qualifications of consultant (education, experience, skills, etc.)
 - Deadlines or other time considerations
 - Constraints on spending, if any
 - Desired format of proposal, for example,
 - introduction
 - objectives
 - approach/methodology
 - scope of services
 - consultant team (summary of team members, with resumes)
 - timetable and fees (fixed or time and expense with quoted rates)
 - references (including similar jobs for similar communities)
 - Criteria for selecting consultant
 - Deadline for proposal and timing for making decision
-

In addition to the annual town meeting, special town meetings may be called at any time. Selectmen must call a special town meeting if they receive a written request, on a form approved by the secretary of state, signed by two hundred voters or twenty percent of all registered voters in the town, whichever is fewer (MGL 39:9).

There are a number of good reasons for holding special town meetings, among them: to make budgetary transfers; to appropriate money received from federal and state programs; to accept donations, gifts or land under certain circumstances; or to separate zoning articles from annual town meeting. Too many special town meetings, however, is a sign of poor management and can test the patience of the voters. You can usually avoid unnecessary town meetings with better budget preparation and better planning for municipal activities.

State law allows town meetings to be held in more than one location at the same time as long as the places are connected by a public address system with loudspeakers to allow all town meeting members to hear and be heard (MGL 39:10). If a town meeting becomes so crowded that people are prevented from participating, the moderator may consult with the selectmen who are present at the meeting and call a recess for not more than fourteen days until better facilities become available (MGL 39:10).

4.34 OPEN VS. REPRESENTATIVE TOWN MEETING

Most towns in Massachusetts still have open town meeting, which means that any registered voter can take part in the lawmaking process. Towns of more than 6,000 people have the option of adopting a representative or limited town meeting (MGL 43A:1-12), sometimes known as the "RTM." Under this system, voters elect town meeting members by precinct to represent them. While only elected town meeting members have the authority to vote on town business, citizens retain the right to address a representative town meeting upon recognition by the moderator. (Town meeting members are exempt from the state's conflict-of-interest laws; see Section 2.21.)

Representative town meetings are not permitted to "commit the town to any measure affecting its municipal existence or substantially changing its form of government." Citizens also have the right to reverse any action taken by the representative town meeting. The law requires a specified number of voters to file a petition seeking a referendum. In most cases, a majority of those voting in the referendum can overturn the action of the town meeting.

4.35 ROLE OF THE FINANCE COMMITTEE

Towns that have a total property valuation of more than \$1 million must create by charter provision or bylaw a finance committee (also known in some towns as the "advisory," "appropriations," or "warrant" committee). In smaller towns, creation of this committee is optional (MGL 39:16). Selectmen may be authorized by bylaw to act as the finance committee; if there is no finance committee, the selectmen perform its principal duty: submitting the budget to the town meeting.

Most finance committees are appointed by the moderator, although the selectmen are the appointing authority for the finance committee in more than forty towns. In a few towns, finance committee members are elected or appointed by a combination of boards. Selectmen serve as ex-officio members of the finance committee in several towns.

4.35.1 Statutory Authority

Finance committees have a number of powers under state law, including:

1. Considering any or all municipal questions for the purpose of making reports or recommendations to the town (MGL 39:16);
2. Making transfers from the reserve fund (MGL 40:6);
3. Submitting the annual budget, with accompanying explanations and suggestions, to the town meeting (MGL 41:60).
4. Approving (along with the selectmen) liabilities in excess of appropriations for snow and ice removal (MGL 44:31D);
5. Making recommendations for appropriations for the support of schools (MGL 70:6).

4.35.2 Other Authority

The actual power of finance committees varies widely from town to town, depending in large part on the charter provision or bylaw under which they were created. Some committees take very seriously their mandate to "consider any or all municipal questions," offering recommendations not only on budget questions but on zoning matters, pending legislation, and employees' salaries as well. In other towns, the role of the finance committee is limited to dollars and cents. In most towns, the finance committee has the sole right to submit the budget. In some, however, the selectmen and the finance committee separately report on every article and budget item.

Although the recommendations of the finance committee are advisory only, the town meeting often accepts them as gospel. It is important for this reason that the selectmen develop a good working relationship with the finance committee long before the budget is submitted. Good communications will help make sure that the finance committee understands and takes into account your budget priorities.

4.40 HOME RULE

In November 1966, the voters of Massachusetts adopted the Home Rule Amendment to the state constitution, granting new powers of self-determination to cities and towns (Mass. Constitution, Article 89, Section 6). Home rule changed the state's philosophy toward local government. Cities and towns went from being the stepchildren of the state legislature to becoming governments capable of deciding (within limits) how best to meet local needs.

4.41 WHAT IS HOME RULE?

The Home Rule Amendment proclaims the right of local self-government as one of the fundamental constitutionally protected rights of the people. It establishes in basic outline form the procedures by which a city or town may formulate, adopt, revise, and amend its own municipal charter without obtaining permission from the legislature.

While cities and towns have fairly broad authority in the way they choose to organize, there are two specific limitations: only towns of 6,000 or more inhabitants may adopt a representative town meeting and only towns of 12,000 or more may opt to establish a city form of government. In addition, the legislature retains the power to offer optional town or city charters which may be adopted or abandoned by cities and towns.

The Home Rule Amendment also establishes a legal framework under which cities and towns share powers with the state. This relationship is described in the amendment:

Any city or town may, by the adoption, amendment, or repeal of local ordinances or bylaws, exercise any power or function which the general court has power to confer upon it, which is not inconsistent with the constitution or laws enacted by the general court in conformity with powers reserved to the general court [by the constitution]... and which is not denied, either expressly or by clear implication, to the city or town by its charter....

4.42 CREATING A CHARTER COMMISSION

The procedures for adoption of a home rule charter are provided for in state law (MGL 43B). In summary, these procedures require that fifteen percent of the voters of the city or town, as certified by the registrar of voters, must petition for creation of a charter commission. On receipt of the petition, the board of selectmen must adopt an order submitting to local voters the question of electing a charter commission to prepare a new charter or revise an existing one.

The election order must provide for the election, at the same time, of a nine-member charter commission. The commission takes office only if a majority of voters vote

Exhibit 4.5

Standard Procurement Cycle

1. Operating department recognizes a need and prepares a requisition. Requisition is approved by the department head and forwarded to the purchasing department.

2. Purchasing department receives the requisition, obtains quotations or bids, makes an award, and issues a purchase order together with any necessary contract document. Copies of the purchase order are sent to the comptroller, vendor, and operating department.

3. The comptroller encumbers (reserves) funds in the dollar amount of the purchase order.

4. Information services enters the encumbrance and other information from the purchase order into the computerized accounting system.

5. The vendor receives the purchase order and ships the specified items.

6. The vendor sends an invoice to the operating department.

7. The operating department receives the shipment; inspects and accepts (or rejects) the material. The person receiving the material signs a copy of the purchase order.

8. The operating department checks and approves the invoice. The approved invoice together with a copy of the purchase order signed by the receiver are forwarded to the comptroller.

9. The comptroller checks the invoice for legality, adherence to town meeting restrictions, and availability of funds. Invoices are batched and sent to information services.

10. Information services enters the information from invoices into the accounting system and produces a warrant (authority from the treasurer to pay listed invoices).

11. The warrant is approved by the comptroller and the town administrator.

12. The treasurer issues the check.

13. The vendor receives payment and the transaction is completed.

Source: Town of Brookline Purchasing Manual

“yes” to the question: “Shall a commission be elected?”

Within eighteen months of its election, the charter commission must submit a charter or a charter revision to the selectmen, who in turn must submit the charter to the local voters for their approval or rejection at the next regular town election. It is important to note that towns with annual elections may, at the option of the charter commission, complete the charter adoption process in one year or stretch it out to two. The language of the constitutional amendment is sufficiently flexible to allow the commission to submit its final report to the voters at either of the two annual elections after it was elected.

4.43 HOME RULE CHARTERS

Charter commissions may propose a wide variety of changes to the local voters (MGL 43B:20). A charter may alter the legislative body (five towns in Massachusetts have created a town council), determine which officials are to be elected and appointed, and set forth procedures for the operation of town government.

Charters adopted in the commonwealth vary widely, reflecting the unique circumstances and philosophy of each town. There are, however, several general trends evident in town charters. Many towns have opted by charter to increase the size of the board of selectmen from three to five members, to reduce the total number of elected officials, to appoint a professional manager, and to strengthen budget, capital planning, and financial procedures. Many charters also provide procedures for reorganizing in the future.

Since the Home Rule Amendment was adopted, about 130 charter commissions have been elected by cities and towns, and some communities have elected more than one charter commission. Generally, the proposal of a charter commission has an even chance of being adopted by the voters.

4.50 THE LEGAL FRAMEWORK

While the Home Rule Amendment expanded their autonomy, towns must still comply with a host of federal and state laws and regulations.

4.51 STATE LAWS

Each year, the Massachusetts General Court (usually referred to simply as “the legislature”) considers hundreds of pieces of proposed legislation, known as *bills*. Bills that are passed by both the House and the Senate and signed by the governor become *laws*.

Some state laws affect only one city or town, or have only limited application in the state. These are known as *special laws* or *special acts of the legislature*. With certain exceptions, special acts may be enacted only at the request of the municipality affected. The legislature, for example, has enacted a number of special acts providing for the recall of town officials in certain towns.

Laws that affect the commonwealth as a whole are known as *general laws*, or *statutes*. Each general law enacted by the legislature adds to, amends, or repeals an existing law. The general laws are compiled in a set of about fifty volumes called the Massachusetts General Laws, which are indexed and updated annually. When lawyers refer to a particular law—for example, the Open Meeting Law—they usually cite the chapter and section where it appears in the Massachusetts General Laws in this form: M.G.L. c. 39, s. 23A-C. For the purposes of this handbook, chapters and sections in the Massachusetts General Laws are referred to in this shorthand form: (MGL 39:23A-C).

Many general laws that deal with municipal government are binding on all towns. Some, however, become effective only at the option of a particular town. The latter are often called *local option laws*, or *acceptance statutes*, because they must be formally accepted by a vote of town meeting. Towns are required to notify the secretary of state’s office any time they accept a local option law. Towns should exercise caution before accepting a law, since some of these are difficult to revoke once accepted. The wording of the general law will tell you whether or not it is an acceptance statute and if and how it may be revoked.

4.52 REGULATIONS

While only the legislature, on the state level, and Congress, at the federal level, can make laws, they also can and often do delegate to administrative agencies the authority to implement laws through rules and regulations. The authority to make rules and regulations must be specifically granted by law. Regulations usually must be published in draft form and available for public comment before they are formally adopted, or *promulgated*. Once promulgated, agency regulations have the force of law and can be found in a set of volumes known as the Code of Massachusetts Regulations.

4.53 COURT CASES

The final interpreters of the law are the courts. The body of opinions issued by courts on particular matters is often called *case law*, because it is derived from judges’ decisions in court cases. Attorneys study case law to determine how courts have ruled in similar situations and to predict how they might rule in the future. In general—although not always—courts base their decisions on principles of law enumerated in earlier cases.

4.54 BYLAWS

Bylaws are the equivalent of laws at the town level. Only the town meeting can adopt bylaws, and their adoption often requires a two-thirds vote. The legislature has enumerated dozens of different subjects upon which towns may adopt bylaws. In addition, the Home Rule Amendment gives towns broad authority to adopt, amend, or repeal bylaws subject to certain limitations (see Section 4.40 for the exact wording).

With few exceptions, town bylaws (unlike city ordinances) must be approved by the state attorney general before they take effect (MGL 40:32). Once a bylaw has been adopted by the town meeting, the town clerk has thirty days to submit a statement to the attorney general clearly explaining the bylaw, including maps and plans if necessary, and adequate proof that all procedural requirements for adopting the bylaw were complied with. If the town clerk fails to submit the bylaw, the selectmen have fifteen more days to do so. If the attorney general fails to act on the bylaw within ninety days, it automatically becomes law. Zoning bylaws are treated slightly differently.

4.55 LEGAL BASE STUDY

While fewer than one-third of the towns in Massachusetts have formal charters, all towns have an informal charter or *legal base*, made up of all the special acts, acceptance statutes, and bylaws that have been adopted. Towns that are considering a change in their organizational structure often find it useful to research their existing legal base.

Here are the steps to compile a legal base:

- *Create a list of the special acts passed for the town.* This requires a comprehensive examination of the annual Acts and Resolves of Massachusetts and a search through the central card catalogue at the Massachusetts State House.
- *Compile a list of acceptance statutes.* The secretary of state's office keeps lists of local option laws accepted by each town.
- *Establish a list of town bylaws that have "corporate implications."* This involves reviewing records maintained by the state attorney general's office.
- *Examine the town's records.* Go through all town meeting warrants to ascertain actions taken by town meeting. This supplements and checks information from state sources.

4.60 LICENSES AND PERMITS

Selectmen are authorized by various state laws (mainly found in MGL 140) to act as licensing authority for a wide variety of businesses, entertainments, and other activities (see Exhibit 4.1). This authority must be exercised strictly in accordance with the provisions set out in the applicable law.

4.61 WHAT IS A LICENSE?

A license, by definition, is a grant of permission to engage in some activity or make use of property in a way that might otherwise be unlawful or that requires regulation or supervision to protect the public health, safety, and general welfare. For this reason, selectmen may issue only those *licenses* specifically authorized by state law. Your board, however, may issue *permits* for certain activities that fall under the broad police powers of selectmen. You may, for example, grant parade permits or permits that allow merchants to hold sidewalk sales. A license differs from a permit in that it ordinarily is issued for use over a substantial period of time whereas a permit generally is of short duration.

A person does not acquire an automatic right to a license merely by applying for one. Recent court rulings have held that an applicant must show that all necessary requirements and qualifications have been met and that grant of the license is in the public interest. [See *Saxon Coffee Shop Inc. v. Boston Licensing Board*, 380 Mass. 919 (1980)]. As a selectman, you must consider the public interest when deciding whether to issue or deny a license.

If your board refuses to grant a license, the decision must be for sufficient reasons. The decision to deny a license application or to refuse to renew a license cannot be an arbitrary one or based simply on your opinion that a proposed use would not be good for a neighborhood. [See *McDonalds Corp. v. Randolph*, 9 Mass. App. Ct. 830 (1980)]. Any adverse ruling must be fair and reasonable and based on evidence presented either against or in favor of the license.

Licenses, as a general rule, are privileges. They are not the property of the license holder. However, several Massachusetts courts have ruled that, under certain conditions, a license can come close to being a property right and cannot be taken away without due process of law. This is especially true if the license holder can show that the license is essential to his or her livelihood or that constitutional rights are involved. [See *Konstantopoulos v. Whately*, 384 Mass. 123 (1981), *Saxon Coffee Shop Inc., v. Boston Licensing Board*, 380 Mass. 919 (1980), and *Higgins v. Licensing Commission of Quincy*, 308 Mass. 142 (1941)].

4.62 LICENSING PROCEDURES

Licensing procedures should be clear and uniform, both to ensure that applicants are treated fairly and to make the job of reviewing applications a little easier. Hearings, when required, should be held promptly. Some towns have found it helpful to compile license requirements and procedures in a single manual (see Exhibit 4.2). When possible, licenses should be renewed at the same time each year.

Some licensing statutes clearly require a public hearing in connection with the granting or denial, revocation or suspension of a license. Other laws do not explicitly require such hearings. Even if a hearing is not required by law, it is often a good idea to hold one, especially if there is any hint of controversy over the license application. It is within the board's discretion to hold hearings to ensure that the license decision is fair, reasonable, and consistent with the public interest and private rights.

The usual procedure is for selectmen to review applications at their regular meetings unless a separate hearing is required by law or requested by the applicant. Requirements for some hearings are more stringent than for others, so it is important to check the appropriate section of law before proceeding. In general, however, hearings that follow the basic format outlined in Section 2.15 on public hearings will be in conformance with state law. As part of the hearing, you may require a license applicant to produce records, documents, and other proof to show that he or she is qualified to hold the requested license and that the activity and location of the proposed use are consistent with the public good.

4.63 VIOLATIONS

Selectmen also have the responsibility, after granting a license, to see that adequate inspections are made by the proper town officials to make certain the license is being properly used. If you learn of a violation, either through an

inspection or through a complaint, you must provide the license holder with written notice that sets out the specific facts relating to the violations and the time and place of any hearing to consider suspending or revoking the license. [See *Newbury Junior College v. Brookline*, 19 Mass. App. Ct. 197 (1985)].

4.64 LICENSES AND ZONING

Although it can be a powerful tool, licensing has its limitations as a way to regulate certain activities in your town. Courts have rejected repeatedly attempts by cities and towns to use their licensing authority to outlaw such things as adult entertainment or video games. However, courts have upheld the right of communities to restrict certain activities by means of their zoning bylaw. [See *Marshfield Family Skateland Inc. v. Town of Marshfield*, 389 Mass. 436 (1983)]. State law (MGL 40A:9) gives towns the right to zone adult bookstores as a use of land.

Making the best use of the town's licensing and zoning authority requires close cooperation between the selectmen and the planning board (see also Section 6.50 on Planning, Land Use Control, and Environmental Management). At a minimum, you should always check with planning officials prior to issuing a new license to make sure the activity for which the license is being granted is a permitted use. By keeping in regular communication with the planning board, you also can recognize and head off undesired trends.

Exhibit 4.6

Areas of Potential Liability for Municipalities and Public Employees

Police Protection: Cruiser accidents, arrests, incarcerations, moonlighting jobs, "ride-along" programs, juvenile detention, unlawful impoundments, animal control, civil rights violations.

Fire Protection: Fire truck accidents, flushing of fire hydrants.

Code Enforcement and Inspections: Acts beyond the scope of authority, intentional torts, failure to follow procedures.

Public Health Services: Negligent care, professional liability, improper maintenance of vehicles, equipment, and buildings, assault, battery, civil rights violations.

Roads: Pot holes, exposed manholes, defective manhole covers, vehicle and equipment accidents, improper function of traffic signals, sidewalk holes, cracks, and uplifts, trees and debris.

Water Department: Malfunction of the system (broken lines, leaks, pressure, fluctuations), water quality, construction accidents, and damages to other underground utilities, property.

Sewerage: Plugged lines, backups, improper maintenance, accidents during construction.

Storm Drains: Plugged catch basins and culverts, accidents during construction, damaging discharges onto other property.

Engineering: Technical disputes with contractors, negligence in design.

Parks and Recreation: Inadequate maintenance of playgrounds, pools, tennis courts, stadiums, grounds, and other buildings, accidents during lawn mowing, tree trimming, accidents during supervised sports.

Public Buildings: Poor maintenance, stairs, rails, structural defects, landlord duties.

Special Events: Crowd and traffic control, spectator stands, food and beverages.

Municipal Automobiles: Normal accident risks.

Refuse Collection: Maintenance of disposal sites, injuries to others by collectors, usual vehicle and equipment accidents.

Source: Office of Local Assistance, Executive Office of Communities and Development

4.65 LICENSES AND TAXES

If town meeting votes to accept the applicable section of law (MGL 40:57), your town may refuse to issue or renew certain licenses until an applicant settles any unpaid local taxes.

4.66 ALCOHOLIC BEVERAGES

In towns that permit the sale of alcoholic beverages, selectmen are the local licensing authority unless the town has created a separate licensing board. All liquor licenses are subject to the final approval of the state Alcoholic Beverage Control Commission (ABCC). Selectmen may make their own rules regarding the sale of liquor, but all local rules must be in conformance with state law (found mainly in MGL 138) and with ABCC regulations. These regulations change periodically, so you need to be sure your town has a current copy.

The range of fees that may be charged for liquor licenses is set by law. Your board may decide within those limits how much to charge. At the end of each licensing year, you must file a report with the ABCC showing the number of licenses granted that year, fees charged, any violations of law by any licensees, and any findings or actions taken on those violations (MGL 138:10A).

The number of licenses that are permitted in your town depends upon its population (see MGL 138:17 for quotas). Towns that have an increased temporary population during part of the year, such as those on Cape Cod, are authorized to issue extra seasonal licenses. Special liquor licenses, granted on a one-day basis, may be issued to the responsible owner or manager of an indoor or outdoor activity or enterprise. Under no circumstances may a liquor license be issued to a person who has been convicted of a state or federal narcotics charge or certain other federal charges.

Both the selectmen and the ABCC have the power to suspend, cancel, or revoke licenses. If the selectmen do so, however, the licensee may appeal to the ABCC. All commission rulings can be appealed in court. Selectmen may refuse to issue or renew a license if an applicant (or licensee) fails to comply with either local or state requirements. The selectmen may modify, suspend or cancel any license issued, but only after a hearing. Selectmen, even in towns where there is a separate licensing authority, may order a license holder not to sell or deliver alcoholic beverages for not more than three days in case of a riot or great public excitement (MGL 138:68).

4.66.1 Referendum on Liquor Sales

If presented with a petition signed by at least one percent of the town's registered voters, your board must call a special election within sixty days to see if voters want to approve the sale of alcoholic beverages in taverns. The referendum may take place on the same day as the regular town election if the petition is filed at least thirty days prior to that date. The question cannot be put to the voters more than once every two years (MGL 138:11, 11A).

4.66.2 Pharmacy Sales

Registered pharmacists holding a certificate of fitness from the state Board of Registration in Pharmacy may sell alcohol on prescription of a physician. This type of sale is authorized regardless of any town vote affecting the sale of alcoholic beverages. The selectmen have the power to revoke or suspend for cause a pharmacist's certificate of fitness, but only after a hearing (MGL 138:29, 30, 30A-F).

In towns where the sale of alcoholic beverages is authorized, registered pharmacists may be licensed by the selectmen to sell alcoholic beverages for medicinal, mechanical, or chemical purposes without a physician's prescription.

A registered pharmacist, who does not serve food in the establishment, may also be licensed under the standard procedure for regular package liquor sales, but the license counts against the local quota.

4.70 CONTRACTS, CONSULTANTS, AND PURCHASING

As a selectman, you will be called upon from time to time to enter into contracts on behalf of the town for a variety of purposes. The awarding of contracts is governed by state statutes and town bylaws. It is a rather complex process, but one that must be followed carefully to avoid problems and lawsuits. Be sure to consult your town counsel for guidance.

Contracts are made in the name of the town and under authority granted to the town by state laws and town bylaws. Before entering into the process of seeking bids and awarding a contract, you should make sure that you have the authority to take the contemplated action. It is also essential to make certain that your town has appropriated sufficient monies to pay for the work, materials, equipment, or services called for in the contract. Only in very rare emergency situations may a town make a contract for which money has not been appropriated first. The contractor also has an obligation to make sure ahead of time that the town has enough money to pay the agreed-upon amount.

As a selectman, you are responsible for setting the policy and tone that public procedures should follow. Contracts should be rewarded on merit. By demanding a professional purchasing process, you can help avoid the possibility of having a bidding scandal which damages the integrity of your municipal government (see Section 4.75). Competition should be encouraged to solicit a variety of bids, and legal requirements such as affirmative action should be adhered to. A centralized purchasing system, which coordinates your community's purchases in accordance with state and local laws, provides for a cohesive and prudent municipal purchasing system.

4.71 CONTRACTS GENERALLY

State law (MGL 45:4) gives a town broad authority to make contracts for the “exercise of its corporate powers.” The statute lists about thirty specific categories for which town contracts may be made, ranging from disposal of garbage to preparation of the assessors’ maps. In some cases, the length of these contracts are limited by law. Contracts for the construction of roads and major public works projected are dealt with in a separate section of law (see Section 4.72 on Public Works and Building Contracts). In some cases, the power to make contracts is specifically granted to a town official or board other than the selectmen. These exceptions are spelled out in the law.

In general, when towns make contracts estimated to cost \$2,000 or more, they must advertise for bids, open the bids publicly, and award the contract to the responsible, eligible bidder who files the lowest bid (MGL 40:4B). State law does not require you to submit contracts for services to bid, although many towns do seek competitive bids as a matter of course (see Section 4.73 on Consultants). In towns that have accepted a specific section of law (MGL 40:4G), the bidding and awarding process only applies when the estimated contract cost is \$4,000 or more. In addition, your town may have set a different standard by town bylaw or by special act of the legislature (MGL 40:4B).

4.72 PUBLIC WORKS AND BUILDING CONTRACTS

A construction scandal in the late 1970s led to passage of a law that revamped the bidding requirements on major public works projects to provide fair competition for bidders. The law (MGL 149:44D) sets out detailed procedures for inviting bids and awarding contracts for construction, reconstruction, repair, and demolition of buildings where the cost is estimated to be more than \$25,000 (see Exhibit 4.3). Another statute (MGL 30:39M) covers construction, reconstruction, alteration, remodeling or repair or the purchase of any materials for public works projects, road construction, and sewers, where the cost is estimated at more than \$5,000, but less than \$25,000. The process for inviting bids and awarding contracts is the same for both categories of work on buildings and other public projects.

4.72.1 Inviting Bids and Awarding Contracts

The notice inviting bids for construction projects must be made public by:

1. Posting the notice continuously for one week near the office of the selectmen or other town office the week before the date for receiving bids;
2. Publishing it in secretary of state’s register of pending public contracts two weeks before the date for receiving bids; and

3. Publishing it once in a newspaper of local circulation two weeks prior to the date for filing bids.

In publishing invitations for bids, your board or other town officers should include a clause reserving the right of the town to reject any and all bids if necessary to protect the town’s best interest (MGL 149:44E). Bidders must include with their bids a sworn statement that the bid is made in good faith, that it is fair and not made in collusion with any persons, and that it is without fraud (MGL 149:44E).

A contract must be awarded to the lowest, responsible, eligible bidder. A “responsible” bidder is defined by law as one who has “the skill, ability and integrity necessary to faithfully perform the work.” An “eligible” bidder is one who meets all the requirements of the bidding law and has employees who can work in harmony with other workers on the job. Contractors who have been barred for misconduct or unsatisfactory work are not eligible bidders (MGL 149:44A) (see also Section 2.20 on Ethics and Conduct).

Towns must provide promptly to the secretary of state information on contracts and bidding dates for publication in the secretary’s register (MGL 9:20). The town must also fill out and file with the state Division of Capital Planning and Operation a form evaluating the contractor’s performance on the job (MGL 149:44D).

4.73 CONSULTANTS

No matter how many people your town employs or how capable those employees are, you will find that you occasionally need to seek outside advice or assistance on a project. Consulting services are available for just about any aspect of local government. Some of the most common uses of consultants in town government include engineering, traffic control, personnel planning, data processing, financial audits, and general management.

There are several good reasons to hire a consultant. First, consultants can provide technical expertise on a one-time or as-needed basis. Using a consultant for this purpose saves a town from having to keep an array of specialists on the payroll. Consultants may also help to complete short-term projects quickly. In this case, the town may have the expertise to do the work, but lack the manpower to carry it out. A third reason to hire a consultant is to get an objective viewpoint on a controversial question. Some issues are so politically sensitive that it is useful to have the advice of an impartial professional to help you make a decision.

Except under unusual circumstances where a consultant is specifically given certain powers by contract, consultants do not execute policy. Their job is to identify issues or problems, advise and recommend. What you do with that information is up to you and other town officials.

Exhibit 4.7

Choosing the Right Level of Insurance

Once you have assessed your town's exposure level and eliminated, reduced, or transferred whatever risks you can, you must select the best level of insurance coverage. Here are a few rules of thumb:

- *Estimate* how much of a loss you cannot afford. This requires financial analysis and will vary with each town. One approach is to divide your risks into three classes: vital, significant, and insignificant.

- *Decide* how much you are willing to pay. If you decide to purchase insurance, you may want to get a policy with a high deductible with high enough limits to protect you in the event of a disaster.

- *Protect* against large losses. Those risks characterized by high severity and low frequency, such as a major fire in a new town building, are best dealt with through insurance. Those risks characterized by low severity and high frequency, such as vandalized windows, are best dealt with as an operating cost or through a self-insurance program.

- *Seek* professional advice. Deciding what types of insurance you need, choosing the practical level of coverage, and selecting the best level of uninsured risks constitute a complicated process that may be easier with professional help.

4.73.1 How to Hire a Consultant

In looking for a consultant, you should seek the individual or team of people that has the right combination of skills and experience for the assignment, can do the work in the timetable and within the budget that the town has allowed, and has a record of success in completing similar assignments. Here are five steps to follow in hiring a consultant:

1. *Identify Qualified Consultants.* Lists of large accounting, engineering or architectural firms can be found in the Yellow Pages of the telephone book. Those interested in municipal business nationally often advertise in one of several national public administration magazines or in one of the numerous magazines for the specialized areas of local government such as police, fire, personnel, finance, data processing, and public works. Local and regional firms often advertise in *Municipal Advocate*, the quarterly magazine of the Massachusetts Municipal Association.

Another way to identify interested firms is to issue a "Request for Proposal," or RFP, and publish it as a legal notice in a newspaper. Many consultants read these ads or subscribe to newsclip services that clip and send them ads in their specialties.

A more informed way to identify qualified consultants is to ask other local officials whom they would recommend. Since consultants are used all over the state, it is often a simple matter to get references from other selectmen and professional administrators. A meeting of a county selectmen's association and the annual meeting of the Massachusetts Municipal Association are excellent places to discuss other towns' experiences.

Finally, the Massachusetts Municipal Association has its own consulting operation—the MMA Consulting Group—which offers services in many areas and has the names and addresses of others in the field.

2. *Competitive Bid vs. Sole Source.* The next decision is whether you want to seek bids from a variety of consultants or deal directly with one. Under state law, towns are not required to submit contracts for services to bid. This is probably due in part to the fact that services are hard to measure and the fees are difficult to compare.

The advantage of going out to bid is that you can compare the proposals of different vendors and make a choice. For competitive bids to be successful, the town should have a good idea of what it wants and have criteria by which to compare the proposals against each other. The major disadvantage of going out to bid is time. It is very time-consuming to review proposals and conduct interviews. If your town has been successful with a particular consultant in the past or if time is of the essence, you may choose to use the same consultant. Otherwise, all other things being equal, competitive bidding is the preferable approach.

3. *Prepare a Request for Proposals.* Regardless of whether you go out to bid or deal with a sole consultant, a request for proposal (RFP) should be prepared. The RFP describes what services the town expects from the consultant and outlines the timetable and other important conditions of the contract (see Exhibit 4.4). Depending on the complexity of the project, the RFP may be shorter than one page or more than ten pages long, although five pages is usually sufficient.

An RFP should be sent to all consultants you intend to have bid on the project. If the services desired are complex, you may want to hold a vendors' conference where prospective bidders can ask any questions not addressed in the RFP.

4. *Review the Proposals.* The content of each vendor's proposal should be reviewed against the RFP and evaluated. At this stage, you should whittle down the finalists to between two and five vendors for interviews. How town officials respond to each consultant in the interview is very important, since a good working relationship is essential to the success of any project.

The most difficult parts of a bid to evaluate are often the fees. Some projects are compensated on a "time and expense" basis, which means that the consultant charges an hourly rate for time and seeks reimbursement for out-of-pocket expenses. Hourly rates often seem high because they

cover not only the consultants' time, but their overhead costs as well. Towns which hire consultants on a time and expense basis are advised to set a cap on the fee so there are no misunderstandings.

Alternatively, consultants may set a fixed fee for a project. This fee is usually based on the consultant's estimate of how much time it will take to complete the project. Under this arrangement, the consultant is gambling that the project will not exceed the original time estimates.

Comparing fees can be difficult. A low price may simply mean that few hours will be devoted to the job and may not necessarily be in your town's best interest. Consultants who submit fixed fee proposals may also give an artificially low hourly rate, but inflate the amount of hours the job will take. Unless there is a wide variation in fees, you are usually better off placing more weight on such criteria as qualifications, overall expense, and the consultant's understanding of the project than on the fee structure.

5. *References.* Before choosing the consultant, carefully review references. Consultants live and die by their reputations. The good ones have a long list of satisfied clients that will recommend them. Be sure to make sure the list checks out.

4.73.2 Consulting Contracts

Once you have decided on a consultant, it is a good idea to spell out the exact nature of the relationship with a contract or a letter of agreement.

The contract should articulate the roles of each party and the conditions under which services will be provided. You should make sure that all conditions important to the town are included in the contract, even if you have worked with the consultant before. Provided that conditions haven't changed, the contract should be quite similar to (or should refer to) the original RFP.

At a minimum, the contract should set forth the purpose of the contract, the scope of services, timetable, and fees. The contract should also clearly identify an individual from each party to the contract as the contact person whom the other party should contact regarding major events or problems. The contact person for the town should be responsible for making sure the consultant is performing up to the town's expectations. Within the timetable, the town should have a clearly defined opportunity to review the consultant's work and make comments. Any dissatisfaction with the consultant should be conveyed both orally and in writing. Most good consultants appreciate being told of problems so they can make corrections before the project is completed.

It is often a good idea to hold back the final payment to the consultant until the town receives a final report or the product promised. Consultants should always be eager to meet the requests of the town, as long as these requests are within the scope of the contract and would not violate the consultant's professional ethics.

4.74 EMPLOYMENT CONTRACTS

Employment contracts between towns and certain employees have become more commonplace in recent years. Professional administrators often require contracts as a condition of their employment; and such agreements are now specifically authorized by law (MGL 41:108N). In addition, your town may have contracts with employee unions. In most cases, these contracts are negotiated and drafted by labor counsel.

4.75 PURCHASING

Because the board of selectmen is responsible for approving municipal purchases, you need to have a working knowledge of your community's purchasing system. There is no one set method for towns to buy their goods and services. However, there are some general principles which all town officials should understand.

MGL 41:103 provides for the establishment of a municipal purchasing department and the hiring of a purchasing agent. This provision requires local acceptance by majority vote. Communities that choose not to accept this law generally have decentralized purchasing systems, with each department handling its own acquisitions of goods and services.

Both state and local regulations govern municipal purchasing. The combination makes each community's system unique unto itself, although all communities must build on the base of state regulations. Local purchasing regulations may be more, but not less, restrictive than state regulations.

Each of the three standard areas of procurement—supplies and equipment, purchase of services (see Section 4.73), and construction (see Section 4.72)—brings its own specific laws and regulations. Town counsel and the purchasing agent are sources for particular questions regarding a community's obligations in each procurement area. See Exhibit 4.5 for a standard procurement cycle for a town with a centralized purchasing department.

4.75.1 Collective Purchasing

The state administers a collective buying program through which communities may enter into joint purchases with the commonwealth (MGL 7:22A-B). Through the State Collective Purchasing Bureau, state contracts have extender clauses that allow political subdivisions to purchase contracted items at the same terms as the state. The political subdivision is responsible for any payment due vendors for its share of any purchase. Currently, municipalities join state contracts for items such as fluorescent lamps and paper products. Also many cities and towns join cooperative buying programs amongst themselves for such items as fuel oil, gas, and rock salt. This is a cost-effective purchasing option as geographically contiguous communities combine to get a lower price on volume purchases.

4.80 LIABILITY AND MUNICIPAL INSURANCE

Municipal insurance, once a minor concern of local officials, turned into a major headache in the mid-1980s as insurance carriers began charging much higher premiums for less comprehensive coverage. Part of the cause of the insurance crisis, which affected a range of businesses and professions as well as governments, had to do with the insurance industry itself. But for municipalities, an additional factor was at work. In 1978, the Massachusetts legislature repealed government immunity, opening a Pandora's box of lawsuits against cities and towns. With municipalities liable to a far greater degree for the acts and omissions of their employees, insurance carriers became much more hesitant to assume the risk.

Until recently, most towns dealt with municipal insurance once a year. Their analysis consisted of comparing the cost of renewing last year's policies with the costs and coverages of new policies. Faced with skyrocketing premiums—not only for liability insurance but for other types of insurance as well—towns are recognizing the need to look at insurance regularly throughout the year and in terms of managing risk.

4.81 THE TORT CLAIMS ACT

A *tort* is a negligent or wrongful act or omission, other than breach of contract, that results in an injury to persons or property, and upon which a civil lawsuit may be based. For years, municipalities were protected by the doctrine of "sovereign immunity" from liability for torts arising out of their governmental activities, including police work, firefighting, and public education. That changed dramatically in 1978 with enactment of the Tort Claims Act (MGL 258).

In essence, the law makes towns (along with the commonwealth, counties, cities, and districts) liable for personal injury, death, or property damage caused by the negligent or wrongful conduct of public employees, acting within the scope of their employment. In many cases the law also provides personal immunity to public employees as long as they give reasonable cooperation to the public employer in the defense of any action brought under the law. It is important to note that the law applies both to acts and omissions of employees and that the employee must have been acting within the scope of his or her office at the time.

4.81.1 Exclusions from Liability

Under the law (MGL 258:10), there are four sets of circumstances under which your town *would not* be liable for claims arising out of the conduct of its employees:

- The employee was exercising due care in the execution of any statute or any regulation of a public employer, or any municipal ordinance or bylaw, whether or not such statute, regulation, ordinance, or bylaw is later held to be invalid.

- The employee was exercising or performing or failing to exercise or perform a discretionary function or duty, whether or not he or she abused that discretion.
- The tort was intentional, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations, or interference with contractual relations.
- The claim concerned the assessment or collection of any tax, or the lawful detention of any goods or merchandise by any law enforcement officer.

The precise application of these exclusions are, of course, subject to court interpretation. Recent opinions, for example, have tried to clarify the fine line between what is a "discretionary" function and what is not. In addition, the fact that a town is not liable under the Tort Claims Act does not mean that it cannot be sued under a different law. Municipalities have become targets of a rising number of federal actions brought under Section 1983 of the Civil Rights Act of 1871. These actions include allegations of discrimination in employment or in the allocation of municipal services, police brutality, and failure to inspect.

4.81.2 Limitations on Liability

Under the Tort Claims Act, a town employee who was negligent would be immune from liability, but the town would be liable for up to \$100,000 per plaintiff. Consequently, if a town employee negligently injured ten people, the town could be liable for as much as \$1 million. Public employees are not liable for punitive damages. Those who intend to sue under the Tort Claims Act are required to present a written claim to an executive officer of the town within two years of the date that the cause of action occurred. The lawsuit itself must be filed within three years. The law specifically provides that towns may purchase insurance to cover them for any damages incurred under the Tort Claims Act (MGL 258:8). In addition, towns may indemnify employees for financial loss and expenses up to one million dollars arising out of a claim based on intentional conduct or violation of civil rights (MGL 258:9). However, the law specifically prohibits indemnification if the employee acted in a grossly negligent, willful, or malicious manner.

4.82 THE PUBLIC WAYS DEFECT LAW

In enacting the Tort Claims Act, the legislature left intact another law that makes towns liable for personal injury or property damage arising from negligence for defects in, lack of repair of, or insufficient railings on public ways (MGL 84:15-25). Under the Public Ways Defect Law, recovery is limited to \$5,000. Notice of the claim must be filed within thirty days and the lawsuit must be filed within three years of the date the cause of action occurred. In addition, the defective condition must be the sole cause of the injury. If negligence by the plaintiff or another party contributed to the injury, the claim is invalid.

The law requires that the public way be “reasonably safe and convenient.” If the injury occurred because there was ice or snow on the road, the town would not be liable as long as it was otherwise reasonably safe and convenient. The law only applies to defective conditions on the road which are dangerous to travelers. The Public Way Defects Law would not be applicable to any defect, such as a sewer backup or water main rupture, that resulted in damage to private property, since the public way itself would not be involved.

4.83 WORKERS’ COMPENSATION

The state workers’ compensation law (MGL 152) was overhauled in 1985 to make significant changes in the administration of the workers’ compensation system, claims handling procedures, and claims benefits. Designed to cover employees for all injuries and accidents that occur while they are on the job, the cost of this insurance program is borne by the town (see also Section 5.42 on Workers’ Compensation).

4.84 ANTITRUST LAWS

A potentially serious area of exposure for local officials involves violation of the federal antitrust laws. In a Colorado case, the U.S. Supreme Court ruled in favor of a cable television company that claimed the City of Boulder had restrained free trade. The high court held that a city is not exempt from the antitrust laws and may be held liable for their violation to the same extent as a private corporation unless there is specific state authorization for the complained-of municipal action.

Other municipal activities that could conceivably involve antitrust considerations include operation of municipal hospitals, agreements with mortuaries, contracts for garbage disposal, contracts for operation of municipal parks and golf courses, and taxi licenses. Whether a town is exempt from the antitrust laws must be decided on a case-by-case basis and only after careful review of the extent to which the state has authorized regulation by a municipality.

4.85 ORGANIZING AN INSURANCE SYSTEM

Today, even the smallest town is not immune from exposure, and it is important to protect your community from loss. The first step in organizing an insurance system is to understand the purpose of conventional insurance: to transfer risk to a third party so the town will not be hit suddenly with a huge claim. There are ways other than simply buying insurance, however, to manage potential losses. You can eliminate the risk altogether (by closing the town beach, for example), reduce the potential for a lawsuit by such techniques as making town buildings safer, assume the risk in a conscious, systematic way, or do a combination of these things. The process used to identify areas of potential loss and to reduce and control it is called *risk management*.

4.85.1 Components of a Risk Management Program

Listed below are the key elements of a risk management program.

1. Survey town facilities and practices to identify things that could expose it to loss (see Exhibit 4.6). Are the streets adequately lighted? Is town land properly fenced? Are entrance and exit doors properly labeled? Once you have done a baseline survey, make sure you have a procedure for keeping it up to date.

2. Reduce or eliminate exposures. Removing unsafe playground equipment, repairing the backstop on a ballfield or correctly labeling swinging doors can eliminate unnecessary injuries and reduce the chances your town will be sued.

3. Transfer exposure to other parties when possible. If your town owns a parking garage or marina, consider requiring the operator to assume the risk for its operation. In contracting for construction work, use indemnity agreements to transfer the risk to the contractor.

4. If you cannot eliminate the exposure, estimate how much you will lose and how often. Some risks cannot be eliminated, but you should have a rough idea how much it will cost you each year to replace windows smashed by vandals or how often you can expect to be sued by someone who falls on town property.

5. Select a practical level of insurance. This is the critical point where you must decide whether to purchase insurance, insure with a deductible, self-insure, or handle claims as an operating cost. Your town may be able to pay the relatively small cost of replacing windows, even if they are broken repeatedly, but not be willing to pay a huge, one-time jury verdict in a personal injury case. (For details on what to consider in making this analysis, see Exhibit 4.7).

6. Stay on top of your insurance portfolio. Whether your town purchases conventional insurance or self-insures, it is important to keep close track of coverage and losses. This requires great attention to detail and good record-keeping practices. An insurance program must be revised continually so your insurance needs are always covered. (See Exhibit 4.8 for types of insurance coverages.)

7. Review your risk management program annually. Plan to reevaluate your risk management program at least once a year to make sure you are collecting the right information and are using it to make sound decisions.

4.86 SELF-INSURING

Self-insurance involves setting up a special fund to handle expected losses rather than paying for losses as they occur. This fund can be invested by your town before it is paid out as claims. Before you decide to self-insure, you should consider how the program will be financed and administered. Your town may decide to self-insure for just one type of risk, such as workers’ compensation, or for a range of risks, including property and general liability. It is a good idea to seek professional advice to make sure the program you set up is workable.

*Exhibit 4.8***Other Insurance Coverages**

In addition to the usual general liability insurance, towns should consider the following types of insurance coverage:

Umbrella Liability provides excess coverage over underlying liability insurance. If a claim occurs or a suit is brought for something excluded by the underlying policies but not excluded by the umbrella, coverage would apply in excess of the deductible.

Pollution Liability provides coverage for liability resulting from unintentional pollution incidents such as a chemical spill.

Ambulance Drivers or Attendants Malpractice pays for damages because of injury to any person arising out of the rendering or failure to render professional services by one of the town's ambulance drivers or ambulance attendants.

Public Officials Legal Liability coverage applies to financial damages or civil rights violations against officials who are found to have committed wrongful acts in the discharge of town duties.

School Board Legal Liability coverage applies to financial damages or civil rights violations against school officials who commit wrongful acts in the discharge of school district duties.

Law Enforcement Liability coverage applies to damages because of wrongful acts which result in personal injury, bodily injury, property damages or civil rights violations arising out of legitimate law enforcement activities.

4.86.1 Financing

Self-insurance programs are financed with a reserve fund, which must be adequate to pay all projected losses, costs, and attorney's fees. The fund should not be more than you would have paid for conventional insurance. State law specifically allows towns to set up reserve funds for workers' compensation and property losses (MGL 40:13, 14), but not for liability losses. Reserve funds should be set up so that money can be carried forward from one budget year to the next. This is necessary because many claims arising out of occurrences in one budget year probably will not be settled or paid for a year or more. Self-insurance claims and the costs of processing them should be allocated to the department responsible for originating the claim.

4.86.2 Processing Claims

Towns that opt to self-insure may decide either to use their own staff to process claims or to contract with a service company. It is often cost-effective to use a service company, especially if your town is self-insuring for the first time, since these firms offer experience that is hard to match. (See Exhibit 4.9 on how to select a service company.) In either case, however, you should have a detailed chart of your claims-processing procedures that specifies which staff member is responsible at each step. In addition, you should make sure that your system gathers information that is useful in preventing future losses.

The most important ingredient in claims handling is prompt follow-up to each claim. A claimant who does not feel that reasonable action is being taken is more likely to file a lawsuit. It is a good idea to write the claimant immediately, letting him or her know that action on the claim is in progress. An early investigation of each claim and a prompt decision to pay or reject can keep the costs of claims lower. Finally, it is often wise to pay property damage losses early, even if a bodily injury claim is still pending. This can help in the settlement of bodily injury claims and reduce costs.

4.86.3 Reinsurance

A self-insured municipality usually protects itself from unlikely, but potentially costly claims by taking out a limited form of insurance from a private insurer. This insurance, called "reinsurance," only covers losses in excess of a specified amount. If losses in a given year exceed the negotiated amount, either because of an unusual number of claims or an unusually large claim, the reinsurance policy pays the excess.

4.86.4 Group Self-Insurance

The revised workers' compensation law (MGL 152) specifically allows cities and towns to form a workers' compensation self-insurance group for the purpose of providing workers' compensation coverage to each member of the group. A minimum of five public entities are needed to form a self-insurance group. The proposed group must file an application with the state commissioner of insurance, who must issue a certificate of approval.

Municipalities are also authorized by law to create a property and casualty self-insurance group. Again, at least five public entities are needed to form such a group, and it must be approved by the commissioner of insurance.

An example of such a self-insurance group is the Massachusetts Interlocal Insurance Association (MIIA). Incorporated in 1982, MIIA is an independent nonprofit organization that offers both workers' compensation and liability insurance pools for member communities of the Massachusetts Municipal Association and other government units. MIIA is dedicated to providing cities and towns with cost-effective insurance coverage, as well as offering a wide array of professional financial and legal services.

4.90 TOWN PROPERTY AND BOUNDARIES

All town property that has not been placed in the care of any particular town board, officer, or department by town meeting vote or bylaw is under the control of the selectmen—unless your home rule charter specifies otherwise (MGL 40:3). Selectmen also have a role in acquiring, renting, and disposing of most town property. However, virtually every action involving town property must be approved by the town meeting and, in some cases, the state legislature.

Towns, like other property owners, are required by law to exercise prudence in the management of the property under their control. In an era of increasing litigation, it is especially important that town property is well maintained and free of hazards. Harm to abutters and others resulting from the town's negligence could result in lawsuits under the state Tort Claims Act.

4.91 ACQUIRING TOWN PROPERTY

Towns may acquire property by gift, tax foreclosure, purchase, and eminent domain, subject to provisions in their charters or any special acts of the legislature. Acquisitions by purchase or eminent domain must be authorized by a two-thirds vote of town meeting (MGL 40:14). In addition, the town meeting must appropriate money to acquire the land. Towns may purchase or take land only for a clearly identifiable public purpose, and the town meeting's action may be invalidated if the land was taken for a non-public purpose. Courts have held that towns may acquire property and lease it to others, but only if the property will be used for the public purpose for which it was acquired.

Towns may acquire interests in land lying outside their boundaries, but again only for a public purpose. Typically this is done for water supply or for public utilities. Although your town is not required to pay taxes in the municipality in which the land lies, state law requires that you pay the municipality an amount in lieu of taxes (MGL 59:5F).

A town cannot become the owner of an interest in land without giving its consent. When a town buys a piece of property, that consent is implied by the purchase price. However, other deeds of property to the town (or to "the inhabitants of the town") must be accepted and approved by the selectmen. References to "sewer easement," "drainage easement," or "water easement" on a recorded plan, for example, are not valid unless they are accompanied by a document accepted by the selectmen. This safeguard is designed to ensure that the town doesn't end up with property it doesn't want, thereby reducing the tax base.

4.91.1 Eminent Domain

Eminent domain is the right of a government to take private property for public use without the consent of the owner. Ordinarily, buying land for a public purpose is preferable to taking the land by eminent domain. One reason is that when you purchase land, you can negotiate an acceptable price with the owner prior to seeking an appropriation from the town meeting. When you take land by eminent domain, on the other hand, the owner has a right to protest the town's determination of what his or her property is worth. If an owner wins a land damage suit, the town must pay the judgment, with interest on amounts above the tendered amount, even if the judgment is in excess of the appropriation.

There may be occasions, however, when taking land by eminent domain is the best alternative. At times you may be unable to settle on terms with the property owner. At other times, it may be impossible to identify everyone with interests in the property. In these cases, your town counsel can help ensure that you follow legal procedures strictly.

Towns are required by law to compensate the party whose interests are being taken, and the award of damages must be supported by at least one appraisal (MGL 79:6A). However, state law (MGL 79:44D) allows the town to recover all back property taxes owed to the town on the property during eminent domain proceedings. The collector should give written notice of the claim in the amount of the lien for taxes before any award of damages is paid.

The process of taking property by eminent domain requires the selectmen to execute and, within thirty days, record an "order of taking" in the appropriate Registry of Deeds. The order must describe the property taken accurately enough for identification and must state the interest taken (whether fee, easement, or right), and the purpose for the taking. Following the recording of the order, a "notice of taking" must be given to the property owner, stating the purpose and extent of the taking, the amount of damages awarded, the time and place where the payment of damages will be made, and the time within which a petition for damages may be filed in the Superior Court (MGL 79:7C). The law allows the property owner to accept the amount of the award, but to reserve the right to take the action to court.

4.91.2 Relocation Assistance

Some takings require that the town help relocate occupants and businesses who are dispossessed by its action. This requirement is governed strictly by state law (MGL 79A), and your town counsel should be consulted to make sure you are in compliance with it. The provisions of this aspect of eminent domain are quite complex and often have serious financial implications for towns. This is another good reason to analyze carefully the full costs of taking land by eminent domain before seeking an appropriation from town meeting or recording an order of taking.

4.91.3 Adverse Possession and Easements by Prescription

There are several legal methods by which a person may acquire ownership or use of land just by using it continually over a period of time. Towns, like private parties, may acquire title to or easements in land by two of these methods—adverse possession and prescription. However, because the requirements are so tough to meet, this happens very rarely. For one thing, your town cannot prevail in an adverse possession case if it has, in any way, recognized someone else as the true owner of the land—for example, by assessing taxes. At the same time, no one else can acquire by adverse possession the title to any property held by the town for a public use.

4.92 TRANSFERRING AND LEASING TOWN PROPERTY

Once a town official determines that property under his or her control is no longer needed for a particular public purpose, he or she notifies the board of selectmen. If authorized by a two-thirds vote of town meeting, the selectmen then may execute a deed or other instrument transferring the control or management of the property to another town department or for another municipal purpose (MGL 40:15A).

Selectmen may lease town buildings for not more than ten years (MGL 40:3). When the town receives rents for the use by others of town property, wherever located, that property (or whatever portion of it is rented) is subject to local taxation (MGL 59:2B).

4.93 DISPOSING OF TOWN LAND

When municipal property is no longer needed for public purposes, the town may sell or otherwise dispose of it (MGL 40:3). The chief exceptions to this rule are lands in trust or for park purposes, or interests in land held for conservation, utilization, or development of agricultural, mineral, forest, water, air, and other natural resources. These lands may be disposed of only by action of the legislature (see also Section 6.80 on Parks, Recreation, and Open Space).

When selling or leasing town property, you need to be careful to avoid giving preference or appearing to give preference to particular individuals or groups. It may be possible, however, to set broad policies for the disposition of town property, as long as they are administered with an even hand. For example, your town might establish a general policy of giving abutters the first option to buy surplus town property. Policies of this sort should be established well before a specific parcel of land is to be sold.

4.94 PUBLIC DISCLOSURE

The state Open Meeting Law (MGL 39:23A-C) permits your board to deliberate in executive session in some negotiations involving town property. It is proper to meet in executive session when considering the purchase, exchange, lease, or value of real property in cases where an open discussion might compromise the town's negotiating position. Prior to going into executive session, however, you should take great care to comply with the strict

Exhibit 4.9

How to Select a Service Company to Process Insurance Claims

Towns that decide to self-insure for one or more areas of risk may want to consider contracting with a service company to process claims. Here are some questions to ask a prospective contractor:

Do you have a list of other clients?

Can you give us the names and qualifications of the employees who would be servicing the account?

What office would you use to service this account?

What arrangements would you make to process a claim that originated from outside this area or state?

On what basis do you calculate your fees and charges? Annually, by claim, by percentage of incurred loss and reserve, or some other way?

Other than your basic service, will there be charges for such things as independent medical exams, legal fees, court costs, engineering? How much will they be?

Can you show us samples of claim forms and other paperwork you would use?

Can you assure us that you are not in the insurance industry and have no other conflicts of interest?

May we see a sample contract for services?

How long would the contract run?

requirements of the law. This includes a statement in open session by the chairman of your board giving the reason for the executive session. (See also Section 2.22 on Open Meetings.)

Appraisals of land to be taken by eminent domain are exempt from public disclosure for a limited period of time under the Public Records Law (MGL 4:7(26)). The law states that appraisals of property that has been or will be acquired are confidential until a final agreement is entered into, until any litigation relative to the appraisal has been terminated, or until the time for filing litigation has expired.

All property agreements involving town land must be accompanied by a signed statement by the parties indicating the names and addresses of all persons who will have a direct or indirect beneficial interest in the property (MGL 7:40J).

4.95 BOUNDARIES

One of your duties as a selectman is determining the physical boundaries of your town. While this may seem like a dull task indeed, its implications are enormous. Towns are defined by their borders. Their municipal powers begin and end at the town line. It is important that towns know precisely what is within their jurisdictions.

Every five years, two or more selectmen (or their designees) are required by law to “locate” the town boundaries and record with the board of selectmen and the town clerk the boundary markers they were able to find and those they were not (MGL 42:2). A copy of the record must be sent by registered mail to the town clerk and board of selectmen of all contiguous towns. You are free to decide in what manner you carry out this mandate, but you should be able to provide evidence to support your determination. Once required by state law, perambulating the borders (actually walking around the periphery of town) is still a good method of locating town boundaries.

Boundaries may be “located” by reference to definite locations and geographical features, such as bodies of water (including the ocean), rivers, highways, state lines, and monuments. Evidence can include maps and documents, wide acceptance supported by local assessment and taxation, the performance of governmental functions, and local understanding and practice.

4.95.1 Common Boundaries

Contiguous towns are required by law to share the cost of erecting permanent stone monuments to mark their common boundaries. If the border is a non-navigable stream, the true boundary lies along its centerline (MGL 42:8). In seacoast towns, the boundary line between adjoining towns changes with the natural changes of the shoreline. State law (MGL 42:1) provides for a method by which this variable boundary is from time to time determined.

If there is a dispute between towns over the true location of their common boundaries, the state Land Court has the power to decide where the line falls (MGL 42:12). In making that determination, the Land Court will generally consider man-made and natural monuments to be more authoritative than written descriptions, courses, and distances.

While adjacent towns share the duty of “locating” their common boundaries, the state legislature has the sole power to change boundaries between towns.

DEALING WITH TOWN OFFICIALS AND EMPLOYEES

5.10 PROFESSIONAL MANAGEMENT

Each year the job of running a town becomes more and more complex. Federal and state regulations, rapidly changing technology, increased liability, and heightened public concern about the environment require that selectmen be experts in a range of disciplines. New demands are constantly being placed on the towns' finite resources. The perpetual battle in municipal government is waged over "who gets what." To help with the day-to-day responsibilities of running town government, many communities have opted for professional management assistance. Since 1966 when the Home Rule Amendment to the state Constitution was adopted, the number of professional managers in Massachusetts towns has grown from about a dozen to more than 120 in 1987, and the trend is likely to continue. The authority and responsibilities of professional managers vary widely from town to town, but in no case does this position replace the policy-making role of the selectmen. Professional managers serve at the pleasure of the board and are responsible for the execution of the board's policy decisions: managers are the administrative arm of the board. While professional assistance may alter the way your town is administered, it does not affect the basic structure or form of government.

5.11 TYPES OF PROFESSIONAL MANAGERS

In Massachusetts, professional management takes several forms. The most common job titles are administrative assistant, executive secretary, town manager, and town administrator, but the actual responsibilities of these jobs differ from town to town.

The role of the administrative assistant is to assist the board of selectmen. Unless the specific duties of the position are spelled out in your town's home rule charter or by a special act of the legislature, the administrative assistant has no independent authority and acts in an advisory role. The scope of duties of administrative assistants varies widely in Massachusetts. In some towns, they are highly skilled professionals who perform administrative duties; in others, their role is limited to clerical tasks. Towns may create the position by a simple vote of town meeting and it may be abolished by the same method.

The position of executive secretary is specifically authorized by state law (MGL 41:23A). The executive secretary performs duties as requested by the selectmen and may act on behalf of the selectmen with their permission. Specific tasks otherwise performed by the selectmen may be delegated to the executive secretary. The position is usually created by bylaw, and is likely to be a permanent position. As the actual duties of the executive secretary may vary with each board of selectmen, so may the influence and impact of this position.

The position of town manager or town administrator is usually the most professional form of assistance. The job must either be created by your town's home rule charter or by a special act of the legislature, which spells out the responsibilities and authority of the position. Town managers can have relatively "strong" or "weak" roles in the administration of your town, depending on how the position is defined. In some cases, for example, the town manager may have the power to appoint certain town officials who otherwise would be elected or appointed by the selectmen. Like other professional managers, however, the town manager works for the selectmen and serves at their pleasure.

A growing number of smaller towns in Massachusetts are opting for another type of professional manager, the "circuit rider." A hybrid of the three positions discussed above, circuit riders divide their time among two or more neighboring towns, providing needed services to communities that might otherwise be unable to afford a professional manager. The position is usually created by vote of town meeting in each of the participating towns, which also appropriate a portion of the circuit rider's salary. In Massachusetts, most circuit riders now perform functions similar to those of administrative assistants. However, it is likely that future circuit riders may be vested with more authority, making the position more like a shared town manager. The Executive Office of Communities and Development can provide more information for towns interested in a circuit rider arrangement.

5.12 ROLE OF THE PROFESSIONAL MANAGER

While the exact role of the professional manager may vary, the central mission remains the same: to “get things done” by taking policy established by the selectmen and town meeting and implementing it. Getting things done requires the ability to direct and coordinate the town’s resources, including staff, equipment, and facilities.

Some of the specific tasks commonly assigned to professional managers are listed in Exhibit 5.1. The following are several critical roles the manager must play to fulfill those duties:

- *Planner/organizer.* Schedules and assigns resources.
- *Communicator.* Stays abreast of issues and keeps all relevant people informed.
- *Coordinator.* Brings the activities of many different people into harmony with the overall goal.
- *Supervisor.* Directs the staff on individual projects and develops overall staff capacity.
- *Expediter.* Ensures that tasks are accomplished and goals are achieved in a timely manner.

While managers in town government are similar to managers in the private sector in many ways, there is an important difference. In town government, the authority of the professional manager is often quite limited. It is important that you as a selectman understand how much authority your professional manager has and make sure his or her responsibilities are in proportion to it.

5.13 RELATIONS BETWEEN SELECTMEN AND MANAGERS

Your relationship with your town’s professional manager is a complex one that must be carefully developed and periodically nurtured. In theory, the selectmen establish policy and the manager administers it. The problem is that policy and administration often mix, and it is sometimes impossible to distinguish where one leaves off and the other begins. It is in this gray area that most difficulties arise and where the real challenge to an effective relationship lies.

Unlike the boards in most private companies, a town manager’s “board of directors”—the selectmen—changes composition fairly frequently, usually every three years. This turnover can create serious problems unless the selectmen and the manager have a good understanding of their roles. The precise relationship between the selectmen and the manager, of course, may need to be reviewed or fine-tuned as the membership of the board changes or when a new manager is hired. But new selectmen should be sensitive to the difficulties of managing within a constantly shifting environment.

While there is no guaranteed formula for success, there are several elements that comprise good selectmen-manager relations:

- The roles of both parties must be defined. These should be clearly documented both in the manager’s job description and explicitly detailed in the town charter or other legal document that authorizes the position.

- Both parties must understand the descriptions and agree to operate within them. Once your town vests certain administrative responsibilities in a manager, you must be careful not to interfere with the exercise of those responsibilities. In the same way, managers should not overstep their boundaries and begin telling the selectmen how to do their job. This is probably the greatest source of dissension between managers and selectmen.
- Both parties should maintain open communications, recognizing that there will be circumstances when lines of responsibility will be blurred.
- There must be mutual respect. Each party must appreciate the other’s job and, most of all, trust one another.
- There must be mutual understanding of each party’s goals and objectives. Usually, this can be accomplished best at the first meeting of the board each year.

5.14 HIRING A PROFESSIONAL MANAGER

Recruiting and selecting a professional manager is one of the most important tasks a board of selectmen can undertake. The right person can provide the town with years of valued service and truly strengthen the town’s resources. The wrong person can be disruptive and cause far more problems than solutions for the town.

Listed below are a few guidelines to follow for recruiting and selecting a professional manager. (For a more complete description, see *Picking the Best & Brightest*, a step-by-step guide to choosing a manager, available through the Massachusetts Municipal Association.)

1. Develop a good, accurate job description. Know what type of position you want and prepare a detailed description of it. Make sure the authority vested in the position is commensurate with the responsibilities assigned.

2. Make sure all members of your board agree on whom you are seeking. While the job description outlines the responsibilities of the position, board members may weigh these duties differently or have different ideas about qualifications for the job. The board needs to develop a consensus about key attributes it is seeking and include this in any advertisement for the position.

3. Consider using an outside consultant. Unless your board is a cohesive group with experience hiring top management personnel, it is often wise to hire a consultant to help determine the kind of position you need and to set up a recruitment and selection process.

4. Be sure your job advertisements are accurate and appropriately placed. They should be carefully worded to reflect your real priorities and should be placed in publications that are read by the type of candidate you want to attract.

*Exhibit 5.1***What Does a Professional Manager Do?**

Listed below are some of the roles commonly fulfilled by a professional manager.

- Supervises department heads and employees. Works with department heads, committees, and boards to evaluate services and improve procedures. Acts as a communication link among departments.
- Screens job applicants and makes recommendations to selectmen.
- Works with selectmen to develop or update personnel policies, including personnel classifications and wage and salary plans. Ensures that personnel practices are consistent with state and federal laws and regulations.
- Trains, monitors, disciplines and discharges employees.
- Negotiates contracts with employee bargaining units. Develops working relationships with employee unions. Attempts to improve labor-management relations.
- Develops financial management policies of the town. Helps set priorities for capital improvements. Works with the treasurer and banks to improve banking relations and to develop cash and debt management programs.
- Prepares and submits budget to selectmen.
- Acts as purchasing agent for the town.
- Seeks out grant sources and prepares grant applications.
- Receives correspondence and sets priorities among issues that demand the selectmen's attention. Answers daily inquiries made to the selectmen. Follows up on routine matters for selectmen.
- Organizes agendas for selectmen's meetings. Performs research on issues when necessary. Prepares selectmen for meetings with briefing memos, including a list of issues and data on each.
- Attends meetings at local, regional, and state levels on issues affecting the town.
- Oversees the town's insurance program.

5. Set a competitive salary. If you want to attract good candidates, you need to give them a reason to consider your town. Before the salary is established, selectmen should consider what comparable positions are paid elsewhere. Statewide salary data are available from the Massachusetts Municipal Association, and nationwide data are available from the International City Managers Association (ICMA).

6. Conduct a regional or national search. One place to start is the career development office of your local college or university. Recruit from as broad a field as possible to get the best selection of candidates. Restrict the search locally only if the salary of the position is insufficient to cause someone to consider moving.

7. Keep the number of interviews to a manageable size. A good interview is a taxing experience for everyone involved, so it is a good idea to interview only candidates that are truly in contention for the position—usually between five and eight individuals. You can always interview more later if the first round is unsatisfactory. If the search is national, expect to reimburse out-of-state candidates for their travel expenses. This is standard practice, and few will come without the reimbursement.

8. Remember you too are being evaluated. Prospective employers sometimes make the mistake of acting as though they control the process since they are doing the hiring. Don't forget that the best candidates are also interviewing you, your fellow board members, and, by extension, the town. You need to sell yourselves to the candidates as well as expect them to sell themselves to you.

9. Execute an employment contract. Employment agreements between a town and its chief administrative employee are permitted under state law (MGL 41:108N) and have become commonplace in Massachusetts as well as elsewhere. These agreements document terms of employment, such as salary, fringe benefits, moving expenses, termination procedures, and severance pay, and can go a long way toward eliminating misunderstandings about policy or employment.

5.20 LEGAL SERVICES

With laws and regulations affecting municipal government in a constant state of flux, towns can't afford to function without the services of a lawyer. The importance of town counsel is more obvious now than ever as the legislature and the courts have cleared the way for lawsuits against municipalities. As a selectman, you need to consider carefully the potential legal consequences for your town before you embark on any course of action.

Massachusetts towns have made various provisions for legal assistance, ranging from creation of full-time legal departments to occasional consultation with a local attorney. In addition, towns are encountering with increasing frequency the need to engage the services of legal "specialists" for particular matters—labor counsel to negotiate collective bargaining agreements, a land use attorney to put together an industrial park, or a lawyer skilled in litigation to defend the town against a personal injury lawsuit.

Although the Massachusetts Supreme Judicial Court does not permit attorneys to hold themselves out as "specialists" in any particular area of law, lawyers, like most professionals, tend to concentrate their expertise in certain subjects. It is important that, at a minimum, your town has the services of a lawyer with a background in municipal law. If and when you need special counsel on a particular matter, and providing that funds have been appropriated, your town counsel should be able to help you find an attorney with the necessary skills.

5.21 ROLE OF THE TOWN COUNSEL

State law identifies certain purposes for which a town is authorized to use the services of counsel, but does not define the position of town counsel or how he or she is appointed. Unless provided otherwise by charter, however, it is usually the board of selectmen that is the appointing authority for the town counsel.

5.21.1 Statutory Duties

The town counsel has some specific responsibilities spelled out by state law, including:

- Representing the board of assessors or the selectmen acting as assessors, before the state Appellate Tax Board (MGL 41:26A);
- Defending the tax collector or treasurer in legal actions for damages (MGL 41:43A);
- Serving as legal adviser to the local retirement board, unless the board opts to retain its own counsel (MGL 32:20(4)7);
- Defending all civil actions against town employees for injury, loss of property, personal injury, or death caused by their negligence, or wrongful act or omission (MGL 258:6); and
- Issuing opinions on the conflict-of-interest law (MGL 268A:22).

5.21.2 Other Duties

In addition to carrying out statutory duties, the town counsel also serves as adviser to town officials and departments. He or she defends the town in all legal actions and prosecutes civil actions on behalf of the town. (The town counsel has no standing in criminal cases.) Counsel also usually prepares and approves legal documents, renders opinions on legal questions, and represents the town and its officials in court and before state agencies and legislative bodies.

The town counsel may also perform other duties, as provided by town charter, or as directed by the board of selectmen or professional administrator. These may include reviewing contracts; drafting agreements, bylaws, and warrant articles for town meeting; attending town meetings; and attending meetings of the board of selectmen and other town boards.

Ordinarily, the town counsel offers opinions to the town meeting and to the various boards and departments of the town. Town administration tends to run more smoothly if the selectmen regulate access to the town counsel by requiring other town officials and employees to seek prior approval before questions are referred to him or her. Some towns have adopted bylaws that require boards to seek approval from the board of selectmen before retaining separate counsel.

In many towns, the town counsel regularly attends selectmen's meetings and meetings of other boards. It is often helpful to have an attorney present to give at least a preliminary opinion on legal issues that arise during your discussions. Some towns meet without counsel, but make a list of legal questions to present to him or her afterwards or have their counsel "on call" during meetings, available by phone when needed. Advice of town counsel is critical if there is any question about compliance with the Open Meeting Law.

5.22 RELATIONS BETWEEN SELECTMEN AND TOWN COUNSEL

Your board's relationship with your town counsel should be a professional one. A qualified town counsel knows the limits of your authority, understands political realities, and can help you assess the risks of certain actions. In no case, however, does he or she make the final decision. While you need to be able to trust your counsel's judgment, you also must make sure you don't mistake a legal opinion for a policy directive. Recent court rulings have held that town counsels do not even have authority to settle or compromise claims against the town. Your town counsel can and should advise you, but it is up to you and your fellow board members, as elected officials, to decide town policy.

Although the board of selectmen is apt to use the town counsel more than most other boards, he or she is not “your” lawyer. The town counsel’s primary function is to interpret the law and defend the interests of the town as a whole. To be effective and credible, town counsel must avoid taking sides both in disputes within the board and, under most circumstances, among town boards and departments.

Occasionally, two town boards, such as the planning board and the board of appeals, take opposing sides on an issue. When such a case results in court action, the town may be required to hire an additional lawyer to represent one of the parties in order to avoid a conflict of interest. In cases of this sort, it should be clear that the town counsel is representing the interest of only one town department.

5.23 OPTIONS FOR LEGAL REPRESENTATION

There are a number of ways in which towns can meet their legal needs. The most common approach is to appoint one person as town counsel and keep him or her on retainer or salary, often providing benefits and covering expenses. A variation is to retain counsel at established hourly rates, to be paid periodically as agreed. Many towns prefer a town counsel who understands the history, problems, peculiarities, and politics of their town.

An alternative to appointing one person as town counsel is to retain a law firm to handle the town’s legal business. While sometimes offering a broader range of talents and skills, this approach can cost more and gives the town less control. In-house law departments should be established only after careful evaluation, since this approach frequently requires the town to pay for office space, clerical staff, library facilities, insurance, and supplies, in addition to salaries.

Town counsel usually serves at the pleasure of the selectmen, unless your charter or bylaws provide otherwise. In some towns, town counsel is appointed for limited terms, occasionally by written contract.

5.24 HIRING A TOWN COUNSEL

Before hiring a town counsel, make sure you know what you are seeking. Counsel should have a background in municipal law. How much time do you expect him or her to devote to the job? What types of work can he or she expect to do?

Lists of attorneys who are involved in public sector work are available from the New England Legal Foundation, the Massachusetts Bar Association, and the Massachusetts City Solicitors and Town Counsel Association. Openings may be advertised in the Massachusetts Municipal

Exhibit 5.2

Town Officials Appointed by Selectmen

Listed below are the town officials most commonly appointed by selectmen and the applicable state law. In most cases, the authority to appoint the official is specified in state law. Otherwise, town meeting must vote to authorize the selectmen to appoint these positions. This guideline should aid selectmen in appointing town officials.

Accountant (41:55)
 Airport commission (90:51E)
 Art commission (41:82)
 Assessors (41:21)
 Board of health (41:21)
 Board of registrars of voters (51:15)
 Building commissioner (143:3)
 Cemetery commissioners (41:21)
 Chief of the fire department (41:21)
 Chief of police (41:21)
 Constables (41:91A)
 Development and industrial commission (40:8A)
 Dog officer (140:151)
 Election officials (54:12)
 Executive secretary (41:23A)
 Fence viewers (49:1)
 Fire engineers (48:45)
 Firewards (48:1)
 Harbormaster and assistant harbormasters (102:19)
 Historical commission (40:8D)

Historic district study committee (40C:4)
 Housing authority members (121:26K)
 Insect pest control superintendent (132:13)
 Inspector of animals (129:15)
 Inspector of buildings (143:3)
 Inspector of health (41:102)
 Inspectors of lime (94:262)
 Inspector of wires (166:32)
 Inspectors and collectors of milk (94:33)
 Keeper of lockup (40:35)
 Manager of municipal lighting (164:56)
 Measurers of leather (95:1)0
 Measurers of wood and bark (94:296)
 Police officers (41:96)
 Pound keeper and field drivers (49:22)
 Public weigher of fish (41:88)
 Purchasing agent (41:103)
 Recycling commission (40:8H)
 Special constables (90:29)
 Superintendent of shade tree management and pest control (132:9)
 Superintendent of streets (41:21)
 Superintendent of water and sewer department (41:21)
 Town counsel (40:5-15)
 Tree warden (41:106)
 Veteran’s agent (115:3)
 Weighers, measurers or surveyors of goods and commodities (41:85)
 Weighers of coal (94:238)
 Weighers of hay (94:236)
 Weighers of vessels (102:6)
 Youth commission (40:8E)

Association's newsletter, *The Beacon*, or in *Massachusetts Lawyers Weekly*, a statewide weekly newspaper for attorneys.

Towns have different policies about requiring town counsel to be a resident. While there are certain advantages to having your town counsel easily accessible, it is also important that he or she keep out of, though be aware of, local politics. If your town is small or if its politics are particularly divisive, it may be helpful to hire an out-of-town lawyer or law firm to handle your legal business.

5.30 PERSONNEL MANAGEMENT

The goal of any personnel management system is to attract and maintain high-quality employees. This requires comprehensive and consistent practices. Your town, no matter how small, should have a written, regularly updated bylaw or set of rules or regulations that spell out the town's personnel policies for all full-time and part-time employees. Job descriptions for each permanent appointed position should also be in writing and there should be a formal salary structure. In towns where some or all of the employees are organized, the terms of labor contracts should be coordinated with personnel policies for non-union employees. (See also Section 5.40 on Labor Relations.)

5.31 WHO'S IN CHARGE

Traditionally, personnel management has been (and still is in many places) entrusted to a municipal personnel board established prior to home rule (MGL 41:108A, 108C). Under certain conditions, the selectmen may act as this board. With the advent of home rule, however, many towns have opted to turn over more of the day-to-day administration of personnel affairs to a professional administrator.

Some home rule charters give full personnel authority to a top administrative position, for example, a town manager or personnel director. In other instances, towns have seen fit to retain the personnel board, but have changed its role to one of hearing appeals and developing policy. Other towns have separate personnel relations review boards to hear grievances by public employees. In general, the trend is toward bringing personnel management more into the overall operations of the town. You should consult your town charter or bylaws to see how responsibility for personnel matters is allocated in your community.

5.32 WHAT IS A PERSONNEL SYSTEM?

Town personnel systems should reflect the civil service or non-civil service status of town employees, and should be consistent with federal and state statutes (including the state's Department of Personnel Administration Rules—PAR), local bylaws and regulations. Special care should be taken to ensure that affirmative action or equal employment opportunity requirements are met. Many of the components noted below are subject to mandatory collective bargaining in towns where public employees are organized. Even so, management should strive to maintain continuity throughout the local personnel system. Basic components of an effective personnel system include the following:

1. *Recruitment and Selection.* Your town should have a system for informing qualified candidates of employment opportunities, including procedures for posting or advertising jobs. Selection must be based on relevant requirements, including affirmative action.

2. *Classification.* Your town should have a classification plan that accurately describes all town jobs and allocates them to proper classification and grade levels. This is usually done by a professional trained in job analysis.

3. *Compensation.* Pay for town employees should be based on an equitable schedule that is consistent with the classification plan and supported by adequate pay data for comparable positions.

4. *Fringe Benefits.* Benefits for employees, such as health and life insurance, holidays and vacation, and sick, military and maternity leaves should be described clearly and based on established procedures.

5. *Working Conditions.* Your town should specify working hours, overtime policy, eligibility for benefits, restrictions on outside employment, and other rules governing behavior, dress, attendance, etc.

6. *Promotions.* Your town should have an open system, based on merit, for advancing employees to higher-level jobs.

7. *Appeals.* The personnel system should include a fair and explicit, multi-level process through which employees can address their grievances to management. The process must be aimed at reaching a satisfactory resolution.

8. *Performance Appraisal.* Your town should have a system for appraising the strengths and weaknesses of all employees. This system can be used to facilitate merit pay increases, merit promotions and employee development.

9. *Employee Development.* Your town should have established procedures for the training and development of its employees. Training should be a routine activity. However, it should emphasize employees who have been found deficient in job skills through performance appraisals.

10. *Employee Discipline.* Your town should adopt standard procedures for documenting the progressive discipline of troublesome employees. Adverse actions, including termination, may be taken for cause; however, employees must be afforded every right and protection required by law. The town has the responsibility to ensure that these requirements are observed scrupulously and that the rights of all employees are respected.

11. *Retirement.* Town-established retirement programs are often valuable aspects of a personnel system. However, if a town participates in a contributory program, it should be careful not to exceed the statutory contribution limits imposed by the state.

12. *Record-keeping.* Your town should have a centralized personnel record-keeping system.

5.33 HIRING

State civil service law and PAR (see Section 5.32) provide selection processes for civil service employees. Towns, however, may exercise discretion in the hiring of certain non-civil service employees (see Section 5.35). Historically, selectmen have been the principal appointing authorities for most but not all town positions. As a result, there are many variations in the way municipal employees are recruited, interviewed, tested, and hired. Regardless of local practice, it must not violate the Federal Uniform Selection Procedures, established by the Equal Employment Opportunity Commission and upheld by the Supreme Court. Deference must also be given to relevant state statutes and rulings.

Your town should adopt standardized personnel intake procedures that detail how job opportunities will be posted and advertised, conditions for employment established, and instructions for applicants disseminated. In addition, you must ensure that procedures for recruiting, interviewing, and testing are equitable and do not exclude minorities, females, or the handicapped. Failure to comply with these requirements can result in severe penalties.

5.34 CLASSIFICATION AND COMPENSATION

Deciding how much to pay employees is a difficult task for any manager, but perhaps more so for public employers who must balance the need to attract and keep a competent work force with the need to be frugal with the taxpayers' money. Linking compensation with a carefully constructed classification plan can go far in helping your town determine how much is fair. The steps to developing a "pay and classification plan" are as follows:

1. Develop a job description for each title or class of employee, including responsibilities and necessary qualifications.

Exhibit 5.3

Sample Job Description and Appointment Criteria

Some communities have codified their appointment practices by publishing a description of boards and committees along with qualifications for membership. A sample appears below.

Permanent Building Committee

Members: Five in addition to two appointed by the selectmen or committee for which a structure is being built

Appointed by: Town Manager

Length of Term: Three years

Openings Occur: April

Meeting Times: Varied

Purpose: As authorized by the town meeting, the Permanent Building Committee has general supervision over the design and construction of public structures, recreational facilities and buildings, including the authority to employ professional assistance, to obtain bids and to enter into contracts on behalf of the town for preparation of plans and specifications and for the construction, remodeling, alteration or renovation, including equipping and furnishing of buildings and other structures and recreational facilities. The plans and specifications for all such construction, equipping and furnishing are subject to the approval of the board or committee for which such building or recreational facility is being planned or constructed.

Criteria for membership: Members should:

- Be people of competence, goodwill and sound, objective judgment;
- Be drawn from new and long-time residents alike;
- Be truly interested in the welfare of the town and all its residents;
- Be sensitive to the long-term as well as the immediate impact of their decisions and recommendations;
- Be willing and able to devote the time and energy necessary to fulfill their responsibilities.

Reference: General Bylaws, Article XVII

Source: Town of Lexington

2. Rate each job title, using criteria such as job content and difficulty, supervisory duties, and experience required. Using such commonly held indications of value, the town can assign a relative rank to each job classification.

3. Conduct a comparative salary survey to find out what similar towns and other employers with comparable jobs are paying. (The Massachusetts Municipal Association publishes statewide data on salaries of local employees.)

4. Based on the data, job analyses, and the town's fiscal profile, develop a salary scale and assign each classification a position relative to its "value" to the community.

5.35 CIVIL SERVICE

Massachusetts has a comprehensive civil service statute (MGL 31), which is intended to implement principles and safeguard employees from arbitrary managerial practices. However, towns are virtually exempt from the law's requirements unless the citizens vote to adopt civil service coverage for specific positions. Towns with populations over 5,000 may decide whether particular employees or classes of employees will be subject to state civil service provisions. In addition, individual towns may place particular positions or groups of positions under civil service by referendum or by special act of the state legislature.

Town positions subject to the state civil service statute are administered in accordance with PAR (See Section 5.32). Functional burdens fall primarily on the state; local discretion is limited. PAR must be consulted and followed in every major personnel decision, such as recruitment, selection, or promotion. In addition, the town must comply with state veterans' preference rules.

In 1981, as part of an effort to reform the civil service laws, the legislature enacted Chapter 31A, which gives municipalities the option of setting up a civil service system somewhat separate from that of state government. As of 1988, however, no city or town has adopted the statute.

5.36 RETIREMENT

Municipal employees who work at least twenty hours a week are required by law to pay into a fund for their retirement. Membership in a retirement system is mandatory for most full-time permanent employees, but optional for elected officials and denied to people who started working for a town after their 65th birthday. Temporary or part-time employees may be allowed membership at the discretion of the retirement board. Although they receive the same benefits as other town employees, teachers participate in a separate State Teachers' Retirement System.

Some towns have their own retirement boards, but most towns' retirement systems are administered by three-member county retirement boards for which participating towns are assessed fees. Each payroll period, towns must deduct a percentage of each employee's wages (in 1988, it was 7 percent for employees hired after January 1, 1975 and 8 percent for those hired after January 1, 1984).

Town employees who have paid into a retirement system for at least ten years are entitled to receive benefits on retirement or disability based on a formula. There are also provisions for benefits to dependents of an employee who dies. For most employees, the normal retirement age is 65 and retirement is mandatory at 70, although retirement ages are lower for police officers, fire fighters, and others in hazardous professions.

5.40 LABOR RELATIONS

Massachusetts has a well-established legal basis for labor relations between municipalities and unions or associations representing public employees. In 1960, town employees were extended limited collective bargaining rights, and in 1965, these rights were expanded significantly. On July 1, 1974, town employees were extended full bargaining rights (MGL 150E). As amended, this law establishes the mutual obligation to meet and negotiate in good faith regarding the mandatory items of wages, hours, standards of productivity and performance, and any other items and conditions of employment. The mandatory nature of specific proposals subsumed by the latter (i.e., other items and conditions of employment) is often subject to interpretative rulings by the Massachusetts Labor Relations Commission. While the law mandates good faith negotiations, it does not compel the town or the union to agree to any proposals or make any concessions in order to facilitate the closure of negotiations. Chapter 150E is a comprehensive labor relations statute, and should be reviewed in matters relating to the obligation to bargain, state and local administrative responsibilities, unit determination, contract length and funding, scope of bargaining, impasse resolution procedures, contract administration and grievance procedures, labor and management rights, prohibited practices and remedies, and strikes and penalties.

For employee classifications excluded from labor relations by Chapter 150E, the determination of wages, hours, and other conditions of employment remain the sole responsibility of the town, subject to available resources. ("Excluded" town employees include those classified as managerial and confidential.) The town may also act unilaterally in regard to employees not excluded under Chapter 150E, if these employees are not organized for collective bargaining purposes or if no labor-management agreement (i.e., contract) is in effect. Once non-excluded employees organize and establish an exclusive bargaining agent, the town must negotiate mandatory items with that agent, and individual employees are precluded from negotiating with the town on their own behalf.

*Exhibit 5.4***Sample Volunteer Response Form****Act Now
Serve Your Community**

Town government needs citizens who are willing to give time in the service of their community. The Talent Bank was adopted by the selectmen and moderator as a means of compiling names of interested citizens to serve, on a voluntary basis, on boards and committees. This file is available for use by the public as well as the moderator and the selectmen.

Talent Bank files are being updated to include categories consistent with the changing needs of the town. Indicate your order of preference and return the form below to:

Town Government Talent Bank
c/o Board of Selectmen

Name Tel. No

Address Precinct

Occupation

Background

List Order of Preference*Planning and Preservation*

Conservation
Commission
Planning Board
Activities
Town Forest
Committee
Board of Appeals
Historic District
Study Committee
Other

Housing

Housing Authority
Other

Education

School Committee
Activities
School Needs
Committee
Permanent School
Building Committee
Other

Personnel

Personnel Board
Activities
Other

Recreation

Park and Playground
Commission
Fourth of July
Committee
Recreation
Commission
Waterfront Advisory
Commission
Other

Government

Finance Committee
Central Purchasing
Committee
Capital Budget
Committee
Other

Other

Beautification
Committee
Senior Citizen
Activities
Town Report
Committee
Youth Commission
Community Action
Council
Computer Study
Commission
Other

5.41 COLLECTIVE BARGAINING

Under Chapter 150E, towns are obligated to negotiate in good faith with the exclusive bargaining agents established by public employees. The legal requirement to bargain in good faith obligates the parties to meet and exchange genuine offers and counter-offers in a bona fide effort to resolve disputes, while establishing and administering an agreement or contract.

The primary participants in the collective bargaining process are the public employer, the employee organization, the commonwealth, and the town meeting.

In Massachusetts towns, town meeting vests the authority of public employer in any local official or board via its charter. Normally, the public employer is the board of selectmen, functioning jointly as the chief executive officer; generally, the selectmen can delegate their authority as public employer to a representative. As a result, in some towns a professional manager or administrator is responsible for collective bargaining, and in others, a town counsel or consultant acts on behalf of the selectmen. (The selectmen or their representatives do not bargain as public employer with school employees. These negotiations are the responsibility of the school committee.)

Non-excluded public employees may be represented by an employee organization which engages in collective bargaining on their behalf. Chapter 150E defines these organizations as “any lawful association, organization, federation, council, or labor union, the membership of which includes public employees, and assists its members to improve their wages, hours, and conditions of employment.” Given this definition, it is not unusual to find some town employees represented by well-established, international unions, while others are represented by a state or local association. In Massachusetts, public employees are free to organize and select their own exclusive bargaining agent in accordance with election procedures established in Chapter 150E and administered by the Massachusetts Labor Relations Commission. This process is known as unit determination (see Section 5.41.1). Individual public employees are free to choose whether to join an employee organization, but these employees are bound by any contract properly negotiated and ratified on behalf of the position classification under which they are employed.

Once the representatives of the public employer and employees reach a collective bargaining agreement, it must be submitted to the union rank and file members for ratification. If the agreement fails ratification, negotiation may be resumed to address the employees’ concerns.

The commonwealth participates in municipal collective bargaining by making policy, administering rules and regulations, and assisting with impasse resolution. The legislature is empowered to enact and amend statutes regulating municipal collective bargaining; relevant state statutes usually preempt town bylaws. The Massachusetts Labor Relations Commission (MLRC) was established in 1937, and with the passage of Chapter 150E, it became vested with collective bargaining responsibilities in the public sector. MLRC oversees unit determination procedures to ensure accuracy and fairness; it makes rulings regarding the status of bargaining items as mandatory or permissive; it investigates and adjudicates unfair labor practice complaints and strike allegations; and it issues procedural rulings.

The Board of Conciliation and Arbitration (BCA) administers procedures for resolving collective bargaining impasses under Chapter 150E. These procedures are mediation, fact-finding, and voluntary interest arbitration. Impasse occurs when the parties are unable to reach agreement on one or more items after a reasonable period of negotiation. If BCA, after being petitioned by one or both parties, agree that an impasse exists, it will initiate impasse resolution procedures.

The Massachusetts Joint Labor Management Committee (JLMC), which was established in 1978, is specifically charged with resolving disputes between municipalities and police and firefighter unions. Its role in resolving collective bargaining disputes expanded significantly when Proposition 2½ repealed the section of Chapter 150E authorizing mandatory binding “interest” arbitration for police and firefighters. In early 1988, state legislation was passed giving the JLMC the power to impose binding arbitration in cases of impasse between towns and police and/or firefighter unions. While the decision of the arbitrator will be binding on the union and the selectmen, the town meeting may reject the arbitrator’s decision by failing to fund it.

None of the relevant state agencies participates directly in a town’s collective bargaining process or is involved in determining the substantive results, except when interest arbitration procedures are implemented.

Town meeting functions as the appropriate legislative body in regard to collective bargaining. As such, the public employer (i.e. board of selectmen) shall submit to town meeting a collective bargaining agreement within thirty days of the date that it was executed by the parties along with a request for necessary appropriations to fund the agreement. If town meeting rejects the request for necessary appropriations, then the agreement is returned to the parties for further bargaining.

5.41.1 Establishing a Bargaining Relationship

A bargaining relationship is established when a public employer extends written recognition to an employee organization designated by the majority of the employees. Unit determination (the establishment of the exclusive bargaining agent) may result from voluntary recognition by a public employer or election by the majority of the employees in the affected unit.

Voluntary recognition by the employer is regulated by MLRC rules. The employer must have a good faith belief that the employee organization to be recognized represents a majority of the relevant employees, must post adequate notice, and must reduce the agreement to writing. Elections are also regulated and administered by MLRC. If warranted, a secret election may be held, following a petition and hearings. MLRC rules require that a petition for an election be supported by 30 percent of the employees in the unit; the election is decided on the basis of a simple majority vote. If a union receives a majority of the votes cast, it is certified by MLRC and recognized by the employer. No election will be directed in a unit within one year of a prior election; usually, no election will be directed if a valid contract or agreement is in force. Once an exclusive bargaining agent is recognized, it must represent the interests of all unit employees without discrimination or regard to union membership. It is permissible, however, to contractually require nonmembers of the employee organization to pay a "service fee" or "agency fee" to the union as compensation for representing their interests.

In Massachusetts, public employees and their unions are prohibited from striking. In addition to a complete work stoppage, encouraging or condoning services or slowing down work are legally considered strikes in Massachusetts. If a strike occurs or is about to occur, the town should consult the MLRC for a determination and administrative requirements.

5.41.2 Labor Contracts

By law, a labor contract cannot exceed a term of three years and must be in writing and then executed by the parties. Within 30 days of execution, it must be submitted to town meeting for funding. Town meeting may reject a contract funding proposal, thus precipitating the resumption of negotiations. The terms of a labor contract will prevail in any disputes which may arise between matters within the proper scope of negotiations as defined by Chapter 150E and any town personnel bylaw, rule or regulation, including those issued by police and fire chiefs. A valid contract will also preempt certain state statutes listed in MGL 150E:7. The contract may include a negotiated grievance procedure, including final and binding arbitration, to resolve any disputes concerning the interpretation or application of the written agreement.

Given the preemptive status of labor contracts, the town should coordinate the terms and conditions of any contract with the town's personnel bylaws as well as all relevant rules and regulations.

5.42 WORKERS' COMPENSATION

Workers' compensation is an insurance program designed to cover employees for all injuries or accidents that occur while they are on the job (see also Section 4.83). Most town employees are covered by the state Workers' Compensation Law (MGL 152), with the exception of police and fire employees (who are covered under other laws, MGL 41:100 and MGL 41:111F) and appointed and elected officials not designated by the town to be covered. The law is administered by the state Division of Industrial Accidents.

Covered employees may receive up to two-thirds of their wage or salary as compensation while they recover from their injuries, but not more than the average weekly wage in Massachusetts. Workers' compensation payments are not subject to income tax. Unless otherwise provided for by a collective bargaining agreement, an employee receiving workers' compensation, in general, can receive no other compensation from the town. Exceptions to this rule include payment for overtime or vacation the employee earned prior to the injury and any accumulated sick leave.

The full cost of workers' compensation is borne by the town. The employee does not contribute to this program at all. As a result, it is imperative that your town fully investigate each claim to verify that the injury is really legitimate. Applicable rules and guidelines should be obtained from the Division of Industrial Accidents.

5.43 UNEMPLOYMENT INSURANCE

Most town employees are covered by the Massachusetts Unemployment Insurance Program (Chapter 1), which is administered by the state Department of Employment Security in accordance with federal regulations. Like workers' compensation, unemployment insurance is paid by the employer and is intended to assist employees who are displaced from their jobs. Employees who voluntarily quit are not eligible for unemployment insurance benefits. In addition, employees who are dismissed for cause may forfeit unemployment insurance benefits. Eligible employees may receive benefits for up to 30 weeks.

5.44 FAIR LABOR STANDARDS ACT

Since April 15, 1986, Massachusetts cities and towns have been subject to the federal Fair Labor Standards Act (FLSA). This act requires that all persons qualifying as employees must receive the federal minimum hourly wage. (Massachusetts municipalities are not subject to the state minimum wage law, which is higher.) In addition, towns must pay civilian employees overtime rates (time-and-one-half) for all hours over forty worked in a single week.

The rate used to determine the overtime pay is not the employee's base pay, but the so-called "regular rate," which includes all compensation received for that week by an employee. For example, if an employee has a base rate of \$6 per hour and works under a differential of \$.30 per hour, the overtime rate would be \$9.15. Police and fire employees are subject to different overtime pay requirements which use a different standard for calculating base hours.

Town supervisory and managerial personnel who meet the tests as executive, administrative, or professional employees can be exempted from the minimum wage and overtime provisions of the FLSA. Volunteers may also be exempted from the act, provided they do not receive more than a nominal fee for their work. Towns cannot circumvent the FLSA by having employees "volunteer" for the same function they perform on their regular job.

5.45 LABOR COUNSEL

Because of the complexity of the laws relating to labor relations and employment, many towns retain specialized lawyers (often known as labor counsel) to help negotiate contracts and ensure compliance with other aspects of the law. (See Section 5.20 on Legal Services.) The collective bargaining law permits the selectmen to delegate their labor relations functions to a representative, such as labor counsel.

When choosing labor counsel, it is important to determine the lawyer's experience not just in employment law, but specifically in public sector labor relations and employment law. It's advisable to retain labor counsel before you need one. An effective labor counsel can often advise you how to avoid legal problems and resolve problems without litigation. The performance of labor counsel should be reviewed regularly and retention based on effectiveness.

5.50 CIVIL RIGHTS

Massachusetts towns are subject to federal and state laws that prohibit discrimination in employment based on sex, race, color, age, religion, handicap, or national origin. These legal requirements encompass all aspects of employment, including hiring, assigning, paying, training, promoting, and terminating employees.

On the state level, the Massachusetts Commission Against Discrimination (MCAD) and the attorney general are primarily responsible for enforcing laws governing civil rights. Federal laws are generally administered by the U.S. Equal Employment Opportunity Commission and the Justice Department.

5.51 AFFIRMATIVE ACTION

In addition to ensuring equal employment opportunity, towns are required by federal law to pursue a policy of affirmative action, that is, to strive for a workforce that includes more minorities and women. While all towns in Massachusetts are subject to affirmative action requirements, the standards are more stringent for larger towns.

Communities with populations of less than 10,000 are required to sign a memorandum of agreement with the MCAD declaring they will uphold non-discriminatory practices with regard to housing, equal employment opportunity, and contract compliance. Communities with greater than 10,000 population must have an affirmative action plan approved by the MCAD. The plan must describe how the town intends to eliminate discriminatory practices and to compensate for the effects of past discrimination. Towns are required to report quarterly to the MCAD of their progress.

When your town applies for state or federal funds, the funding source will check routinely with the MCAD to make sure that your town is in compliance with anti-discrimination laws. Failure to comply can jeopardize important sources of money.

5.52 EQUAL EMPLOYMENT

The federal equal employment opportunity law is augmented on the state level by the Fair Employment Practices Act (MGL 151B), which also prohibits discrimination on the basis of age, ancestry, or physical or mental handicap. The MCAD is the enforcement agency for this law.

5.53 UNIFORM SELECTION

Regulations adopted by the federal Equal Employment Coordinating Council set guidelines designed to prevent the use of selection procedures that tend to exclude minorities. Selection procedures (including any test of fitness prescribed by an employer) are judged according to "adverse impact." That means if a test results in a selection rate for a particular sex, race, or ethnic group of less than 80 percent of the rate for the group with the highest rate, there is evidence of adverse impact and the test may be considered discriminatory. Your town should apply a testing process equally to all candidates for employment. The process should be documented with sufficient information to show that you have tried to reach protected groups and that the evaluation of candidates for jobs is fair and reasonable. It is important to keep records of this process in case your procedures are later challenged.

5.54 AGE DISCRIMINATION

Federal law (29 USCA sections 621, 634) makes it unlawful for a public employer to discriminate in employment against people over the age of forty. Prohibited practices cover hiring, discharging, limiting, segregating, or classifying employees in any way which would deprive the persons of employment opportunities or adversely affect their status. The law does, however, contain some exemptions. In addition, it may be acceptable to set an age limitation for a bona fide occupational reason. Be sure to check the law and consult your town counsel if there is any doubt.

5.55 DISABILITY ISSUES

Massachusetts is a pioneer in the establishment of policy and programs supporting the rights of disabled persons. In Chapter 231 of the Acts of 1918, the commonwealth declared that disabled persons are entitled to become integrated into society. Today, many federal and state laws prohibit various types of discrimination. Section 504 of the federal Rehabilitation Act of 1973 and the federal Civil Rights Restoration Act of 1988 apply to all municipalities across the country by prohibiting discrimination in access and participation in all federal programs by disabled individuals.

In 1980, Article 114 of the Massachusetts Constitution was enacted to read: "No otherwise qualified handicapped individual shall, solely by reason of his [or her] handicap, be excluded from the participation in, denied the benefits of, or be subject to discrimination under any program or activity within the Commonwealth." The Massachusetts public accommodations law (MGL 272:92A) prohibits discrimination based upon a disability (as well as sex and race) in places of public accommodation; this term, according to this statute, refers to any place "which is open to and accepts or solicits the patronage of the general public...." Some examples given in the statute are transportation facilities, seashore and swimming pool facilities, libraries, and hospitals; other types of facilities would clearly fall within this category. The law not only guarantees the right to access to a place, but also prohibits discrimination with respect to any services offered.

The architectural access law (MGL 22:13A) requires that any public building constructed or remodeled with public funds after December 1968 or any other building open to the public, which was constructed or remodeled after June 10, 1975, be accessible to persons with physical and/or mental disabilities. The law is enforced by local building inspectors and by the state Architectural Access Board.

The special education law, widely known as Chapter 766, guarantees all students three to twenty-one a free public education within the least restrictive environment. Each child must have an individual education plan designed to meet his or her needs and strengths. The parents have a

right to be involved in drawing up the plan and must consent to it. Students from ages fourteen to twenty-one also have a right to be involved. The plan must be reviewed annually and revised if necessary. The law is enforced by the state Department of Education with many decisions made by the courts. (See Section 6.33 for more information on this law.)

In 1983 the Deaf Rights Bill was passed. This statute forbids discrimination in real estate and education because a deaf person owns a hearing dog. It also requires a sign language interpreter for court and administrative proceedings. The interpreter is to be paid from public funds.

The employment discrimination law (MGL 151B:1) prohibits an employer from firing or refusing to hire, rehire, or promote or otherwise discriminate against a person because of a handicap. Labor organizations and employment agencies are also covered. Pre-employment inquiries are forbidden, and reasonable accommodations are mandated. The law is enforced by the Massachusetts Commission Against Discrimination, which took the first action under it against the state's Department of Personnel Administration. The result was a new and non-discriminatory policy regarding disability and employment.

Other state laws prohibit discrimination in housing due to blindness (MGL 151B:4), discrimination in jury service based on a physical handicap (Chapter 326 of the Acts of 1981) and discrimination by insurance companies solely on the basis of blindness or a physical handicap (MGL 175:193T).

5.60 APPOINTING TOWN BOARDS AND COMMISSIONS

One of your many responsibilities as a member of the board of selectmen is appointing people to serve on town boards and commissions. Depending on how your town is organized and how interested its citizens are in civic life, fulfilling that duty can be a huge undertaking.

Certain town officers, including the town meeting moderator and members of the school committee, are required by law to be elected. State law designates the selectmen as appointing authorities for several positions, and town meeting may authorize the selectmen to appoint others. (See Exhibit 5.2 for a list of officials commonly appointed by selectmen.) In addition, towns routinely delegate to selectmen the responsibility for appointing short-term committees for such purposes as deciding whether to build a new town hall or planning a holiday observance.

An average town may have at least a dozen committees operating at any one time—some with three or more members and most offering no compensation at all. In some towns, there always seems to be a steady supply of committed, qualified people willing to serve on these boards. More often, however, selectmen find they have to scramble to find good candidates to fill certain vacancies.

5.61 RECRUITING QUALIFIED APPOINTEES

Some selectmen complain that their town government is like musical chairs: the same old people are always filling different seats. Getting “new blood” on town boards and committees is essential to the vitality of your town, but it doesn’t happen by accident. The easiest way to stir up interest is simply to educate people about their town government—what it does and how they can become involved.

Several towns publish and circulate a citizens’ resource guide that gives a brief description of each office, board, committee, or department within the town, along with a list of volunteer opportunities. (Exhibit 5.3 is an example of a “job description” for a permanent building committee and outline of criteria for membership.) Another approach is to hold an annual open house at town hall to familiarize citizens (especially new residents) with town operations and to solicit their involvement.

The process of appointing people to serve on town boards can be simplified if you maintain a current file of qualified applicants. Some towns use an application form (see Exhibit 5.4) that allows citizens to express their interest in serving on particular boards and to describe briefly their background and skills. The form should be published in the annual report or, once or twice a year, in the local newspaper. Selectmen should keep the responses on file and refer to them as vacancies occur.

5.62 HOW TO CHOOSE AN APPOINTEE

Who you appoint to serve on a town board can be just as significant as who you hire to fill a full-time, paid town position. In some cases, state law or town bylaws set out specific qualifications for membership on town boards or commissions. Usually, however, those decisions are up to you and your fellow selectmen. While there is no one right way to choose an appointee, the following suggestions may help guide your decision:

1. *Seek a mix of skills.* Don’t assume that every member of the board of health must be a physician or every member of the youth commission must be under 30. The most effective boards often have members from a range of professions and perspectives.

2. *Strive for diversity.* While your affirmative action obligations are different with volunteer boards, it is good policy to seek diversity in age, sex, race, political party, neighborhood, and length of residency.

3. *Be clear about job requirements.* Many boards require a substantial time commitment, including attendance at evening meetings and weekend outings. Make sure your appointees understand what is expected of them.

4. *Don’t appoint people with axes to grind.* Boards function best when their members are willing to compromise. People with unshakable opinions—even if you happen to agree with them—can paralyze a board, making any progress impossible.

Unless otherwise provided by law or bylaw, a person need not live in town to accept an appointment to public office. However, if the town tells the appointee at the time of appointment that he must move into town within a specified time period, then his failure to do so means he has voluntarily vacated the office (MGL 41:109).

5.63 THE APPOINTMENT PROCESS

In many towns, selectmen appoint board members so their terms of office expire at the same time each year, usually at the end of the fiscal year or around the time of town meeting. At a minimum, your board should keep a calendar of appointments so you know in advance when the terms of different board members are up. When possible, selectmen should meet each candidate for a town board or office before making a final decision on the appointment.

Appointments should be made by majority vote of the selectmen (unless otherwise specified by law or bylaw) and should be confirmed in writing with a letter to the appointee. The town must keep accurate records of committee appointments and their termination dates, and it is a good idea to publish them in the annual town report. State law requires all appointees to take an oath of office before assuming their duties (MGL 41:107).

Most appointed positions authorized by state law are for one- or three-year terms. In many cases, you may want to renew appointments for another term. Don’t just rubber-stamp renewals, however. Limited terms provide you with a good opportunity to review the job being done by the appointee and by the board in general and to make any necessary adjustments.

When appointing committees for a specific purpose (for example, to study municipal insurance), always set a termination date beforehand. The life span of temporary committees can always be extended, but committees without a firm date of dissolution are often hard to end.

5.64 RELATIONS BETWEEN SELECTMEN AND APPOINTED BOARDS

Once appointed, town boards and commissions must be free to act on their own, without interference from the selectmen. However, it is important that your board maintain close communications with these and other town boards and departments. At a minimum, selectmen should review the minutes of each board meeting. Some towns circulate copies of board minutes to all town departments and agencies through a central mail box in Town Hall. Several towns make the minutes of all board meetings available to the public at the local library.

One way of improving coordination among town boards and departments is to schedule meetings several times a year with all department heads, and board and committee chairpersons. If well organized and well run, these meetings can provide a good forum for discussing larger town issues such as land use control or cost containment that cannot be solved by one agency. It is important to have an agenda for these meetings to help keep the discussion on track.

5.65 VACANCIES IN OFFICE

Vacancies in town office occur most often when a board member resigns in mid-term. Regardless of the reason for the vacancy, the town clerk must be notified in writing for resignations to be effective (MGL 41:109). If there is a vacancy in a board of two or more members, the remaining members must give written notice to the selectmen within a month (MGL 41:11). After a notice of one week, the selectmen and the remaining board members must fill the vacancy by a majority vote of those voting. The selectmen must fill the vacancy themselves if the remaining board members fail to give them notice within the required time. If there is a vacancy in any town office except selectman, auditor, clerk, tax collector or treasurer, the selectmen must fill the vacancy in writing.

In the case of a vacancy in the office of accountant, collector or treasurer, or if that person is unable to fulfill the duties of office, the selectmen may make a temporary appointment (MGL 41:40). You may also appoint a temporary highway surveyor, road commissioner or tree warden under similar conditions. If the office of auditor becomes vacant, the remaining auditors, if any, may perform the duties and appoint a person to assist them. If there is no remaining auditor, the selectmen must appoint a temporary one (MGL 41:49).

If there is a vacancy in the office of town clerk at the time of a town meeting, or if the town clerk is absent or unable to serve, the town meeting must appoint a temporary clerk by ballot. The votes are counted by the selectmen, if present, otherwise by three people chosen at the meeting. If a town

clerk is needed to perform duties other than those at the town meeting, the selectmen must appoint a temporary town clerk in writing (MGL 41:14). If the selectmen appoint an acting town clerk, the chairman of the board must notify the secretary of the commonwealth.

5.65.1 Vacancies on Board of Selectmen

If there is a vacancy on the board of selectmen or a failure to elect a selectman, the remaining selectmen may call a special election to fill the vacancy. You must call a special election for this purpose if you get a request in writing signed by 200 registered voters or 20 percent of the total number of registered voters in town, whichever is less, and provided that the request is filed not less than 100 days before the next annual election (MGL 41:10). If a selectman announces in advance that he or she plans to step down as of a certain date, the town clerk may certify the date when the vacancy will occur. The remaining members of the board may then call a special election, provided that the election is not held before the effective date of the resignation.

5.66 TERMINATING APPOINTEES

How free you are to remove appointees depends on the basis you were authorized to appoint them. According to recent court rulings, cities and towns in Massachusetts have no power to remove public officers unless that power is specifically spelled out in state law.

State law defines the powers of town officials and boards to appoint and remove specific "town officials" and "town appointees" (MGL 41). For example, MGL 41:25 mandates that an assessor may be removed "at any time for cause after a hearing." Similar mandates exist for other appointees; however, the majority of Massachusetts statutes authorizing selectmen to make appointments do not define their authority for removing the same. It is strongly advisable for you to consult your town counsel about appropriate procedures for removing an appointee.

OVERSEEING TOWN OPERATIONS

6.10 PUBLIC SAFETY

Public safety services are among the most important, and certainly the most visible, services your community provides. Many citizens measure the effectiveness of their local government by how many patrol cars they see or how quickly the fire department responds to alarms. Clearly, however, public safety involves much more than making arrests and putting out fires.

As a selectman, your specific relationship with public safety operations depends on how your town is structured. In some towns, the responsibility for running police and fire departments rests largely with the chiefs. In others, the selectmen retain tight control over public safety services. Selectmen also act as the bargaining agents for the town in contract negotiations with public safety unions (see Section 5.40 on Labor Relations).

At a minimum, selectmen need to understand how the security of their town's citizens is being protected, to make sure public safety personnel are carefully selected, well trained, and properly equipped, and to monitor procedures and practices used to carry out this critical function.

A rash of successful lawsuits against cities and towns arising out of acts of police officers has made your supervision more necessary than ever. Many of these lawsuits have been won on the grounds that the police officers were unqualified or inadequately trained. One way to reduce your town's exposure to liability is to see that in-service education and training is provided and to make sure police procedures are current. (See also Section 4.80 on Liability and Municipal Insurance.)

6.11 POLICE

Unless otherwise specified in your town's charter, the board of selectmen is the appointing authority for the chief of police and other police officers. Your legal relationship with your police department probably falls under one of the following categories:

1. *"Weak" police chief* (MGL 41:97). The selectmen appoint a police chief to run day-to-day operations and may appoint any other officers they deem necessary. Effective control of running the department remains with the selectmen. As long as the police are not subject to civil service, the selectmen may remove the chief or other officers for cause, after a hearing, at any time during their appointment.

2. *"Strong" police chief* (MGL 41:97A). The selectmen appoint a police chief who has the power to make regulations for the department, subject to the selectmen's approval. While selectmen still have the ultimate authority over the department, a greater degree of management and policy-making responsibility falls to the chief.

3. *Commissioner of public safety* (MGL 41:21, 101). In towns that vote to accept the applicable section of law, selectmen have the authority to appoint a commissioner of public safety to act as both police chief and fire chief. The commissioner may appoint a deputy as police chief and one or more deputy fire chiefs, subject to the approval of the selectmen.

4. *Regional police districts* (MGL 41:99B-99K). Two or more contiguous towns may organize a regional police district to serve and protect residents of the towns. The district must be approved by the voters of all towns involved. Police districts are supervised by a regional police district commission, made up of two members from each town, appointed by the selectmen.

6.11.1 Appointing, Training, and Removal

Your freedom to appoint, discipline, and promote police officers depends largely on whether police are under civil service in your town. Appointments and promotions under civil service are subject to competitive examinations (see Section 5.35 on Civil Service). Even non-civil service hiring, however, is subject to a variety of state and federal requirements.

Under state law, for example, no person who has been convicted of a felony may be appointed as a town police officer (MGL 41:96A). Permanent, full-time officers must attend a police training school approved by the Massachusetts Criminal Justice Training Council prior to exercising any police powers (MGL 41:96B). Police officers must also receive regular in-service training. A 1985 law specifically requires police officers to be trained in the detection, intervention, and prevention of suicide (MGL 40:36C).

Every member of a regular police (and fire) department appointed after August 1, 1978, must reside in Massachusetts and within fifteen miles of the limits of the town where he or she works (MGL 41:99A). Towns may, however, adopt bylaws or include in collective bargaining agreements a requirement that all regular police officers hired after August 1, 1978 live within the town limits.

Wages, hours, and other conditions of employment are subject to collective bargaining in towns where public safety employees are organized (see Section 5.41 on Collective Bargaining). In towns accepting one of various sections of state law (MGL 147:16, 16A-16C), members of the police department are entitled to time off on a regular basis, depending on the specific provision adopted.

The conditions by which police officers and police chiefs may be removed from office vary depending on the section of law under which they were appointed. In general, however, removal must be for cause, and only after a hearing.

6.11.2 Reserve Force

Towns that have an organized police department may establish a reserve force by accepting the applicable section of law (MGL 147:13A). The town may determine how large a reserve force is needed. Reserve officers are appointed in the same manner as regular members of the police department. They are subject to rules and regulations of the selectmen and may be removed by the selectmen for any "satisfactory" reason. Your town may opt to put reserve officers under civil service.

6.11.3 Mutual Aid

Towns that accept the applicable section of law (MGL 40:8G) may enter into agreements with neighboring cities or towns to provide mutual aid. Towns may agree to furnish personal services, supplies, materials, contractual services, and equipment to towns that need help. At the request of the mayor, selectmen, or chief of police of another municipality, a town may provide police officers for service in another city or town; compensation and travelling expenses are paid by the city or town making the request (MGL 41:99). On request, selectmen in towns that border or include federal government reservations may authorize their police force to lend assistance (MGL 147:1A).

6.11.4 Lockups

Towns with 5,000 or more residents are required by law to maintain a "secure and convenient" lockup (MGL 40:34). The selectmen are required to appoint each year a keeper of the lockup, who has care and custody of those detained there. The lockup must be accessible at all reasonable hours to the state police, sheriffs, constables, and police officers for legal and proper uses (MGL 40:36-37).

After several people committed suicide in local jails in the state, the legislature imposed strict requirements for the way lockups must be equipped and operated (MGL 40:36B). Though costly, providing adequate security in your lockup will help protect your town from liability in case of a lawsuit. Lockups and police stations also must comply with health, safety, and sanitation regulations of the state Department of Public Health (DPH) (MGL 111:21). The selectmen are responsible for seeing that those regulations are enforced. Lockups and police stations that do not meet DPH standards may be shut down, after a hearing.

6.12 FIRE

The board of selectmen is the appointing authority for fire personnel. The structure of your town's fire safety operation probably falls under one of the following sections:

1. *"Weak" fire chief* (MGL 48:42A). Similar to the law governing "weak" police chiefs, this section permits the selectmen to appoint a fire chief and other fire personnel who are under the selectmen's control. The selectmen effectively run the department themselves.

2. *"Strong" fire chief* (MGL 48:42). The selectmen appoint a fire chief, who in turn appoints a deputy and other fire personnel. Under this section, the chief has "full and absolute authority in the administration of the department," makes rules and regulations, and reports to the selectmen from time to time. The chief may be removed for cause by the selectmen, after a hearing.

3. *Commissioner of public safety* (MGL 41:21, 101). In towns that vote to accept the applicable section of law, the selectmen appoint a commissioner of public safety to act as both police chief and fire chief. The commissioner may appoint one or more deputy fire chiefs, subject to the approval of the selectmen.

4. *Fire districts* (MGL 48:60-66 and special acts of the legislature). Fire districts may be organized in any town having no adequate fire department. The district may establish its own fire department, headed by a chief engineer.

A few towns may still provide fire protection under one of the following older sections of law:

1. *Fire engineers* (MGL 48:45). The selectmen establish a fire department composed of engineers. No more than twelve engineers may be appointed for one-year terms. The engineers choose a chief engineer, a clerk, and other necessary officers, and appoint enginemen. Engineers may be removed for cause after a hearing.

2. *Firewards* (MGL 48:1, 2). Under this old law, selectmen appoint firewards who are in charge of extinguishing fires.

3. *Enginemen* (MGL 48:29). This law permits selectmen in towns with fire engines to appoint enginemen to run the equipment.

6.12.1 Forest Fires

The selectmen are required to appoint annually a forest warden, who is responsible for putting out forest fires (MGL 48:8). The forest warden may be the tree warden, a selectman, or the fire chief. In towns that have a "strong chief" fire department, the fire chief is automatically the forest warden and is authorized to appoint deputy wardens (MGL 48:43).

Money appropriated by a town for the prevention of forest fires is spent by the forest warden under the supervision of the selectmen. The forest warden, his or her deputies, and others assisting them at forest fires are paid at a rate set by town meeting or by the selectmen (MGL 48:8).

6.12.2 Mutual Aid

Most towns have agreements with bordering communities to provide mutual aid in the case of a serious fire or other emergency (MGL 48:59A). Towns may, by bylaw or vote of the selectmen, authorize their fire department to help other communities.

Unless the towns have a written agreement to the contrary, the town giving aid is responsible for operation of its own equipment and for any damage to it. Subject to limits on municipal liability, the town giving aid is also responsible for personal injury caused by or sustained by its own personnel and for payments to survivors of any firefighters killed or injured on duty (MGL 48:59A).

In addition, the state Civil Defense Agency has developed a plan to mobilize all local firefighting units in the event of an emergency. The plan divides the state into fourteen fire mobilization districts. In each district, the head of a local fire department serves as district fire mobilization director.

6.12.3 False Fire Alarms

The board of selectmen may offer a reward of \$500 for information leading to the arrest and conviction of a person ringing a false fire alarm (MGL 276:10).

Exhibit 6.1

Sample Warrant to Dog Officers

Commonwealth of Massachusetts

(Seal)

, ss.

To , constable of the town of

In the name of the commonwealth of Massachusetts, you are hereby required to proceed forthwith and to seek out, catch and confine all dogs within said town not duly licensed, collared or harnessed, and tagged, according to the provisions of chapter one hundred and forty of the General Laws, and you are further required to make and enter complaint against the owner or keeper of every such dog, and to kill or cause to be killed by methods of execution other than gunshot except in case of emergency, T-61, so-called, an euthanasia solution not under the control of the federal Drug Enforcement Administration, unless by a veterinarian, succinylcholine chloride, any drugs that have a curariform-like action, electrocution, or any other method which causes an unnecessarily cruel death. Each such dog which after being detained for a period of ten days, shall not then have been duly licensed, collared or harnessed, and tagged, except that any male or any spayed female dog not found to be diseased may be

made available for adoption for not less than three dollars, and you shall keep an account of any such adoption and forthwith pay over the money to the town treasurer. Before delivery of any dog so adopted you shall procure a license and tag for such dog from the town clerk of the town where the dog is to be kept, in accordance with the provisions of section one hundred and thirty-seven of said chapter one hundred and forty of the General Laws.

Hereof fail not, and make due return of this warrant with your doings therein, on or before the first day of October next, on or before the first day of January next, and on or before the first of April next, and at the expiration of your term of office, stating the number of dogs caught, confined and/or killed, or adopted, and the name of the owners or keepers thereof, and whether all unlicensed dogs in said town have been caught, confined and/or killed, or adopted, and the names of persons against whom complaints have been made under the provisions of said chapter one hundred and forty, and whether complaints have been made and entered against all persons who have failed to comply with the provisions of said chapter one hundred and forty.

Given under my hand and seal at aforesaid the day of in the year nineteen hundred and

Chairman of the Selectmen of

6.13 EXPLOSIVES AND FLAMMABLE MATERIALS

In most towns, selectmen issue licenses, pursuant to local bylaws, for the storage, handling, manufacture, and sale of petroleum products, explosives, gunpowder, dynamite, fireworks, and other flammable materials. Bylaws must be approved by the state Board of Fire Prevention, which also regulates these materials (MGL 148:9, 13).

Licenses are basically granted for the property on which the flammables or explosives are being kept or used, and therefore may be transferred to new property owners if the business is sold. As licensing authority, you have fairly broad discretion to grant or withhold these licenses after a hearing and to impose conditions on their use. You may consider, for example, factors other than fire hazards (such as traffic congestion) when deciding whether to grant a license. Courts have upheld the right of towns to prohibit self-service at gas stations.

For a license to be issued, it must have the endorsement of the head of your local fire department. Licenses may be revoked after notice and a hearing by the licensing authority or by the state fire marshal. However, they may not be revoked arbitrarily.

6.14 FIREARMS

Residents who want to keep or carry firearms must get approval from the appropriate licensing authority in your town, usually the police chief or board of selectmen. Firearms identification cards (MGL 140:129B) allow the holder to keep rifles or handguns in his or her home or business. They do not have to be renewed and are valid until revoked or suspended.

To lawfully carry a firearm outside his or her home or business, however, a person also needs a firearms license, renewable every five years. Licenses are issued after an investigation and may not be issued to aliens, convicted felons, people under eighteen years, and anyone who has been convicted of a drug charge (MGL 140:131). If your board is the licensing authority, you have considerable discretion in granting or denying firearms licenses. In deciding whether to grant a license, you must determine first whether the applicant is a suitable person to possess a firearm and, if so, whether he or she can demonstrate a proper purpose for carrying one. Your decision is likely to be overruled by a court only if it is arbitrary or capricious or if you abuse your discretion. Licenses to carry firearms may be revoked at will.

The licensing authority also issues licenses for people to sell, rent, or lease firearms, shotguns, rifles, and machine guns, to carry on the business of a gunsmith, or to sell ammunition (MGL 140:122, 122B). When issuing or renewing these licenses, you must give notice of your action to the state commissioner of public safety. Licenses to sell or rent firearms may be declared forfeited or suspended on proof of the licensee's violation of the law or conviction of a felony (MGL 140:125).

The local licensing authority must not disclose any records divulging names or addresses of people who own or possess firearms except to criminal justice agencies, and only then under certain narrow circumstances (MGL 66:10) (see Section 2.23 on Public Records).

6.15 AMBULANCES

Most towns in the state have made some provision to ensure that their residents have access to emergency ambulance and medical services. By law, towns may appropriate funds to purchase and maintain ambulances and equipment and to hire personnel to run them (MGL 40:5(21A)). Towns may also contract with a private ambulance service (MGL 40:4) or enter into agreements with other governmental units to provide joint fire, rescue, and ambulance service (MGL 40:4A). Many towns subsidize volunteer ambulance groups or provide emergency medical services through their police or fire departments. A booklet, *Emergency Medical Resources in Massachusetts*, describes the various options open to towns and is available for a fee from the Office of Emergency Medical Services of the Department of Public Health.

Towns that opt to provide ambulance services must comply with state law (MGL 111C) and with rules and regulations of the DPH, which also licenses private ambulance companies. Under the law (MGL 111C:6), no ambulance driver or attendant may begin work without having successfully completed a full course in emergency medical care approved by the department. The department's Office of Emergency Medical Services can answer questions about ambulance personnel and training standards. Standards for vehicles and ambulance services are handled by the Division of Health Care Quality.

No certified emergency medical technician, police officer, or firefighter who, in the performance of his or her duty and acting in good faith, renders emergency first aid and/or transportation will be liable for injury or death or for the hospital expenses of those admitted (MGL 111C:14).

6.16 CIVIL DEFENSE

Towns are authorized by law to establish local organizations for civil defense (Special Laws, Chapter 31). The organization is run by a director, who is appointed by the town manager or administrator or by the selectmen. The director, who may be a selectman, is responsible for the organization, administration, and operation of the local organization, subject to the direction and control of the appointing authority.

Local civil defense organizations are part of a statewide network under the leadership of the Massachusetts Civil Defense Agency. Although their original purpose was to defend against enemy attack, today these organizations are most active during natural disasters, providing shelter and emergency power generation during floods and hurricanes.

Exhibit 6.2

The Key Players

Board of Appeals (MGL 40A:12). The zoning bylaws of every town must provide for a zoning board of appeals, unless your home rule charter specifies otherwise. Within three months of the adoption of a zoning bylaw, the selectmen must appoint a three- or five-member board of appeals.

The board may, at the town's option, exist only for the purpose of considering variance requests or it may also be the special permit granting authority for one or more of the special permits authorized by local bylaw. As the appointing authority, you can influence the extent to which the zoning bylaw is followed by questioning candidates for board of appeals in advance about their grasp of the law and their philosophy about granting variances.

Conservation Commission (MGL 40:8C). Towns may establish conservation commissions of between three and seven members to promote and develop natural resources and to protect the town's watershed. Members of the commission are appointed by the selectmen or by the town manager, if your town has one.

The main responsibility of the conservation commission is to administer the Wetlands Protection Act (MGL 131:40), although a number of towns have used their home rule powers to adopt a wetlands bylaw that gives the commission greater regulatory powers. Decisions of the conservation commission may be appealed to the state Department of Environmental Quality Engineering (DEQE), and then to superior court.

Board of Health (MGL 41:1). Towns may either opt to elect or appoint a board of health, or else the selectmen act in that capacity.

Boards of health have more discretionary power than planning boards and much more authority than many realize. Their legal duties range from granting permits for private drinking water wells and approving subdivision plans to making rules and regulations governing garbage and deciding whether to assign a site for a hazardous waste facility. In addition, they have broad powers to adopt and enforce any reasonable health regulation.

Planning Board (MGL 41:81A). Towns with populations of more than 10,000 must establish a planning board of between five and nine members. Smaller towns have the option of creating a board or having selectmen serve in that capacity until one is formed. Most planning boards are elected, although they may be appointed if the town meeting so determines or if so authorized by your home rule charter.

Among the varied responsibilities of planning boards is administration of the subdivision control law (MGL 41:81K-81GG). In addition, the planning board is required to develop a master plan for the town (MGL 41:81D); it may be designated the special permit granting authority; and it must hold hearings and issue reports on all warrant articles proposing zoning amendments.

Zoning Administrator (MGL 40A:13). Towns may provide, by bylaw, for the appointment of a zoning administrator who performs the duties delegated to him or her by the board of appeals. Unless otherwise provided by charter, the zoning administrator is appointed by the board of appeals and subject to the selectmen's confirmation.

The demands of this position as described by law would probably make it a full-time job. To date, no Massachusetts municipality has opted to create such a position.

Zoning Enforcement Officer (MGL 40A:7). Zoning is administered by the zoning enforcement officer, who in most towns is the building inspector. Towns may, however, adopt a bylaw giving those duties to someone else. Before appointing a building inspector, be sure you ascertain whether that person will also serve as zoning enforcement officer, since that job requires special sensitivity and skills.

The zoning enforcement officer may issue building permits only for uses of land and the manner of uses that are legal under zoning. Decisions of the zoning enforcement officer may be appealed to the board of appeals.

Selectmen may appoint, train, and equip volunteer, unpaid auxiliary firefighters and police officers and may establish and equip other volunteer, unpaid public protection units as approved by the state Civil Defense Agency. Unless their actions are determined negligent in court, people engaged in civil defense activities are generally immune from liability, when acting in good faith, for anyone's death or injury, or for damage to property.

Under a separate law, selectmen, in times of war, public emergency, or distress, are charged with expending, either directly or through someone they appoint, money appropriated by the town to maintain, distribute, and supply at reasonable rates a sufficient supply of food, other common necessities of life, and temporary shelter (MGL 40:19).

6.16.1 Nuclear Power Plant Area

Every community located within a ten-mile radius of a nuclear power plant is considered to be in a “nuclear power plant area” (MGL 31:2B). Under this law, the director of the state civil defense agency is to publish and release to local officials preparedness and response plans in the event of a nuclear accident. The plans are to be reviewed by the public and public hearings are to be held.

6.17 ANIMAL CONTROL

There are few things more likely to pit neighbor against neighbor, to evoke tirades from otherwise serene citizens, and generally to cause trouble for selectmen than dogs. State law (MGL 140:147A, 173A) gives towns authority to enact bylaws regulating dogs. Although the town clerk is actually the licensing authority for dogs (MGL 140:137), it is the selectmen who have the thankless job of deciding what to do when one resident’s pet becomes another’s pest.

As a selectman, you are legally bound to investigate any written complaint about a dog alleged to be annoying to a sick person or a nuisance because it is vicious or barks excessively (MGL 140:157). You must also investigate complaints about dogs attacking or biting other dogs or animals. (The same duty to investigate written complaints about dogs also rests with the county commissioners and chief of police.)

At times, you can solve a dog problem simply by acting as a mediator between the dog owner and the angry neighbor. If the problem is more serious, however, you may, after conducting an investigation, make any order you deem necessary concerning the restraint or disposal of the dog (MGL 140:157). Your decision, however, may be appealed within ten days to the district court, and the decision of the court is final. Anyone who fails to comply with your order (or an order of the court) may be fined up to \$25 or imprisoned for thirty days, or both, for the first offense and fined up to \$100 or imprisoned for up to sixty days, or both, for subsequent offenses.

Dogs that are ordered restrained may be killed by a police officer, constable, or dog officer if found loose (MGL 140:158). In addition, the selectmen may, after written notice, order the killing of a dog known to have “worried” or killed livestock or fowl, unless the owner agrees to restrain the dog for twelve months and posts a bond as a guarantee (MGL 140:160). The selectmen may also offer a reward, not exceeding \$25, for the killing of any dog found “worrying,” killing, or maiming livestock or fowl, or for information about the identity of the dog’s owner (MGL 140:162).

Selectmen, after giving notice, may order all dogs in town muzzled or restrained from running at large for a specific period (MGL 140:167). After twenty-four hours of the notice, you may issue a warrant directing that those dogs in violation of your order be killed. Most towns prefer to wait for up to ten days to destroy the dogs to give their owners a chance to claim them for a fee.

6.17.1 Dog Officers

Every May 1, the board of selectmen must designate one or more dog officers, who may be police officers or constables, or contract with a domestic charitable corporation (such as the Society for the Prevention of Cruelty to Animals) to perform the duties of dog officers (MGL 140:151). Dog officers, who may not be licensed animal dealers, are primarily responsible for confining and destroying dogs.

Under state law, animals that are ordered destroyed must be killed in a humane manner. Several prohibited methods are detailed in the law (MGL 140:151A). In addition, towns may not give or sell any animal that comes into its custody to a research facility or animal dealer (MGL 140:151).

Every year, during the first ten days of June, the selectmen must issue a warrant directing the dog officers to catch and confine all dogs that have not been licensed, collared or harnessed, and tagged according to law (MGL 140:153). A sample warrant appears in Exhibit 6.1. After ten days, any dog that is unclaimed may be destroyed or put up for adoption.

Any town officer involved with animal control may, without a warrant, enter any place where there is an exhibition of fighting dogs, birds, or other animals, remove the animals, and arrest anyone present (MGL 272:89).

6.20 ROADS, TRAFFIC CONTROL, AND PARKING

State laws governing maintenance and repair of roads date back to the early days of the commonwealth, when cows and horse-drawn carriages accounted for most of the traffic on town streets. It is small wonder that many of the highway laws now seem outdated and confusing.

As a selectman, your involvement in road maintenance and repair may be minimal or significant depending on how your town is organized. In some towns, the ordinary repair of roads is under the exclusive control of one or more highway surveyors (MGL 41:62). Alternatively, towns may vote to elect one or more road commissioners who have the same powers and duties regarding roads as do the selectmen and highway surveyors (MGL 41:63, 64). Road commissioners also act as tree wardens and, unless there is a separate commission, as sewer commissioners. Many towns provide for the appointment by the selectmen of a superintendent of streets, who acts under their direction (MGL 41:21, 66, 68). Two or more towns can join together to “share” a superintendent of streets (MGL 41:67).

Increasingly, however, towns are opting to establish public works departments that have general control not only over roads, but also of water and sewer services, rubbish disposal, shade trees, town forests, and often, parks and cemeteries (MGL 41:69C-F). Ordinarily, public works departments are headed by a superintendent of public works, appointed by an elected board of public works. Towns may also vote to have the selectmen serve as the board of public works (MGL 41:21).

6.21 PRIVATE VS. PUBLIC WAYS

Town roads are divided into two categories: public ways and private ways. Generally, public ways are those that are open to unrestricted use by the public and for which your town has taken responsibility for maintenance and repair. Private ways are those that are open for a limited use, usually providing access to homes. To the casual observer, the distinction might not be obvious, since both types of roads are usually open to traffic. However, the difference can be quite significant to your town.

6.21.1 Maintenance of Private Ways

State law requires towns to maintain public ways and railroad crossings so they are “reasonably safe and convenient” (MGL 84:1) and creates a limited liability on the part of the town if it negligently fails to properly maintain them (MGL 84:15-25) (see Section 4.82 on the Public Ways Defect Law). While towns are not required by law to maintain private ways, many have done so over the years.

Recently, some towns looking for places to save money have discovered to their surprise that they were never legally required to maintain and plow all the roads they routinely service. Although it may be tempting to simply stop maintaining private ways, there could be serious political and even legal consequences from such an action. It is important to consult your town counsel before taking such a step.

Towns may, by bylaw, establish procedures for making temporary (and usually minor) repairs on private ways at the request of abutters (MGL 40:6N). The bylaw must address several specific issues, including what percentage of abutters must petition for such repairs, whether betterment charges will be assessed, and the extent of the town’s liability on account of damages caused by these repairs.

Towns that accept the applicable section of law (MGL 40:6C) may also vote to appropriate funds for the removal of snow and ice from private roads designated by the selectmen as open to public use.

6.21.2 Accepting a Private Way as a Public Way

Abutting property owners who want the town to take over maintenance and repair of a private way may petition the selectmen (or road commissioners) for the “laying out” of the way and for its acceptance by town meeting as a public way (MGL 82:21-23). State law sets out in detail the procedure that must be followed.

6.21.3 Discontinuing Public Ways

It is sometimes difficult to determine whether a way is public or private. However, towns can clearly declare a road to be private by discontinuance, a process that legally frees the town from the responsibility for its maintenance. If the road was private to begin with, discontinuance has no effect except to confirm its status.

State law provides two different methods for discontinuing a public way. The oldest method (MGL 82:21) is by majority vote of the town meeting. This method requires a prior hearing and report by the planning board (MGL 41:81I), but does not require notice to landowners other than the notice contained in the town meeting warrant article. Generally, a warrant article must contain enough information to apprise voters of the nature of business to be taken up. It is a good idea, therefore, at least to list the roads proposed to be discontinued in the article.

An alternative method allows the board having charge of the way to discontinue it after giving notice to affected property owners, publishing and posting the plan, and holding a public hearing (MGL 82:32A). The board must find that the way “has become abandoned and unused for ordinary travel” so that common convenience and necessity no longer require the way to be maintained for travel.

Private owners along a way that has been discontinued have the right to sue your town under the eminent domain law for damages caused by the discontinuance (MGL 82:24). The landowner cannot collect from the town merely because the way is no longer public, however. The landowner must suffer damages peculiar to him or herself and not shared by other afflicted persons. The courts have not indicated what kind of damages would qualify.

When a road is discontinued, it becomes a private drive owned by all persons along it who have a legal right to use it. Discontinuance does not by itself cause a road to become blocked off. However, the owners can collectively close it off, and any one of them can improve it, as long as he or she does not block access to others entitled to use it.

6.22 SIDEWALKS

Selectmen (or road commissioners) have general authority to establish, maintain, and rebuild sidewalks (MGL 83:25-27). No sidewalk may be dug up or constructed without their approval. In ordering construction of a new or permanent sidewalk, the selectmen or road commissioners may provide for special assessments on abutting property not exceeding one-half of the cost of the sidewalk. If the town bylaws so provide, the total amount assessed on any individual property may not exceed one percent of its assessed valuation. Assessments must be recorded with the registry of deeds.

6.23 STATE AID PROGRAMS

All towns receive state aid for road and street construction and maintenance. In addition, the state has several programs that share the costs of specific road and road-related projects. It is up to your town to maintain and repair any road constructed or improved with state money, other than a state highway (MGL 81:25).

6.23.1 Chapter 90

The largest distribution is through the Chapter 90 program, so called for the chapter in the General Laws that authorizes it. Chapter 90 funds, administered by the Massachusetts Department of Public Works (MDPW), are earmarked for highway-related purposes, such as road resurfacing, preliminary engineering, right-of-way acquisition, drainage, sidewalks, and traffic control facilities. The money may not be used for road maintenance.

Chapter 90 funds are allocated according to a formula based on population, number of miles of roads, and the number of people employed in the community. Small towns, towns that have low in-town employment, and towns with substantial miles of road to maintain are eligible for additional distributions.

6.23.2 Other Aid Programs

The MDPW has several highway-related grant programs for which towns must apply. The Non-Federal Aid Substandard Bridge Program provides funds to improve or replace town-owned bridges. The Public Works Economic Development Program provides grants for projects that encourage or stimulate local employment or economic development, including construction of parking lots or access roads. Towns with populations of 2,000 or less are eligible for Small Town Road Assistance Program grants for capital construction projects promoting public safety and economic development. Other grants are available for storage of winter road salt, maintenance of roads that provide access to state-owned land, and construction of bike paths. More information about these programs are available through your regional MDPW District Office.

6.24 TREES ALONG HIGHWAYS

All trees along public ways are known as “public shade trees” (MGL 87:1-5). They are considered public property and are under the care and control of the town tree warden (or whatever board of department serves that function in your town).

Trees may be planted within the boundaries of a highway only with the approval of the tree warden, and in a location satisfactory to the selectmen or road commissioners. No tree may be removed without a public hearing. Even with a public hearing, if someone objects in writing, the selectmen must make the final decision. The tree warden may, however, remove small trees without a hearing and may trim or cut down trees and bushes that obstruct a highway if ordered to do so by the selectmen, road commissioners, or highway surveyor. Tree wardens may make rules and regulations that have the effect of bylaws when approved by the selectmen.

6.25 TRAFFIC CONTROL

Towns have authority under several different sections of law to regulate the use of public and private ways, either by bylaw or by rules and regulations adopted by the selectmen (unless another board has been given responsibility for traffic regulation in your town). In most cases, rules and bylaws must be approved in advance by the MDPW, although there are some exceptions. Be sure to refer to the correct section of law for specific requirements.

The selectmen, park commissioners, or the traffic commission or its director, if any, may make special regulations about the speed of motor vehicles and the use of motor vehicles on roads under their control (MGL 90:18). You may also prohibit the use of vehicles altogether on certain roads and, at the written request of the property owners, issue special regulations for private ways or private parking areas. Traffic regulations must be published in a local newspaper and approved in writing by the MDPW before they go into effect. Speed regulations must additionally be approved by the state registrar of motor vehicles (MGL 90:18). There are similar requirements for regulations about use of roads by pedestrians (MGL 90:18A).

Separate state laws permit towns to make bylaws and selectmen to make rules for the regulation of “carriages and vehicles” on town roads (MGL 40:22) and to install traffic devices for the protection of school children (MGL 85:21A). Except under certain narrowly defined circumstances, no bylaw or rule purporting to regulate signs, lights, signal systems, traffic devices, parking meters, or markings is effective until it is published and approved by the MDPW (MGL 85:2).

Towns may, by bylaw, designate areas on town roads to be used as bicycle lanes (MGL 40:21(16B)) and may provide for the closing of any public way during specified hours to promote recreation or sport (MGL 45:17A). The selectmen may set hours and areas on public ways where sledding is permitted (MGL 85:10A). The written permission of the selectmen (or road commissioners) is needed to move a building through a public way (MGL 85:18).

6.26 PARKING

In towns that accept one of the applicable sections of law (MGL 90:20A, 20A(1/2)), the selectmen (or town manager, if any) appoints a parking clerk who is under their direct control. The parking clerk coordinates the processing of parking notices in the town. In addition, he or she may, subject to the approval of the appointing authority, hire staff and organize divisions or contract for those services by competitive bidding (MGL 90:20A). The parking clerk may also perform other municipal jobs, except for police functions. Some towns assign this role to the town clerk.

Various state laws permit towns to regulate where and when people may park. Towns that accept the applicable section of law (MGL 40:22D) may adopt traffic regulations authorizing the towing of illegally parked vehicles from roads under town control. Towns can also, by bylaw, require that designated parking spaces be provided for disabled veterans or handicapped people in public and private off-street parking areas (MGL 40:21(23)). Towns may limit parking in front of houses and apartment buildings to people living there as long as signs are posted (MGL 40:21(21)).

Towns may appropriate money for the acquisition, installation, maintenance, and operation of parking meters on town roads (MGL 40:22A). However, the location of parking meters must be approved by the MDPW (MGL 85:2). Towns that have installed parking meters may acquire off-street parking areas and facilities, subject to certain conditions (MGL 40:22B). Towns may also install parking meters in municipally owned or leased off-street parking lots (MGL 40:22C).

6.30 EDUCATION AND LIBRARIES

In your town, you will find that the school system, whether it be local, regional, or a combination thereof, is in the hands of an independently elected school committee. It is solely responsible for the hiring of a school superintendent; once selected, the superintendent becomes the executive officer of the school committee (MGL 71:59). Your role as a selectman is to ensure that the municipality complies with the law related to your school system (MGL 71:37).

6.31 SCHOOL BUDGET

The superintendent of your school system is responsible for the preparation and submission of the school budget. According to state law, the budget delineates expenditures for the support of the public schools, including the salaries of all employees, school transportation, classroom operating costs, cooks, and supplies (MGL 70:3). In turn, every town is to appropriate funds “sufficient for the support of its public schools” (MGL 71:34). The amount requested is first submitted to the school committee by the school superintendent (no later than December 21). The school committee deliberates with the selectmen and/or the finance committee, revising and adjusting the budget—where necessary and consistent to meet prescribed educational goals. Before these groups give their final approval, a public hearing is required (MGL 71:38N). It is customary that the school budget process mirrors the municipal budget process—as it should because the school portion of the town budget is usually more than fifty percent of the total town’s budget. After the public hearing, the school budget is approved and then is printed in the town warrant. Town meeting votes on the total appropriation—not on individual items contained within the appropriation request (MGL 71:34).

Exhibit 6.3

Special Types of Zoning

In recent years, towns have introduced various innovative types of zoning to protect their natural resources. A summary appears below:

Many towns have adopted *floodplain zoning* in order to reduce the hazards of floods. A floodplain district is an “overlay district,” which means it adds new restrictions to the underlying permitted uses. These restrictions might prohibit or regulate certain types of buildings or forbid filling or excavating that might aggravate flooding in flood-prone areas.

Zoning to protect ground water supplies has also become increasingly popular. Most communities increase minimum lot size in residential districts over known aquifers. Zoning also may protect ground water by allowing only low-density residential use where heavy development could overtax groundwater supplies or pose a risk of contamination.

Aquifer protection districts are overlay districts that reduce big developments and prohibit high-risk polluting businesses. *Watershed zoning* typically regulates development upstream of municipal wells or reservoirs. *Performance zoning* may set specific restrictions and requirements to maximize recharge of ground water or to prevent contamination.

Wetland districts, another type of overlay district, are used for both flood control and ground water protection. This type of zoning commonly bans or restricts structures or land alterations within meadows, marshes, swamps, and related bodies of water.

Some towns pay special attention to open space. Where there are large parcels of undeveloped land, *cluster zoning* and *planned unit development zoning* may be adopted to reserve open space. These techniques promote flexible site planning.

Cluster zoning allows buildings on smaller lots, closer together or even attached in return for setting aside open space and recreation areas. Planned unit development zoning offers an optional licensing procedure for large parcels that permits a mix of residential, commercial, office space, and recreational uses.

Finally, zoning may impose *energy-related requirements* or offer incentives encouraging conservation or energy-efficient design, such as orientation of houses to solar south, orientation of streets east-west, and control of tree heights to maximize summer shading and winter exposure.

Zoning also may address *solar and wind power generation*. Some towns are evaluating whether to provide a “right to light,” that is, an easement for solar access so that later development does not unreasonably shade solar power installations.

This relatively new process was one of the byproducts of Proposition 2½. Prior to the passage, the school committee acted autonomously; once it passed the school budget, the action by town meeting was pro forma. Proposition 2½ changed all this; now the committee acts in concert with the selectmen and/or the finance committee in considering the school budget. Thus, the school budget, like those for all other municipal departments, is constrained by the vicissitudes of Proposition 2½.

6.32 REGIONAL SCHOOL SYSTEMS

The regional schools are separate entities from your town's public school system. State law allows every municipality to establish a regional school district and then to create a regional school system (MGL 71:14). Based upon a contractual agreement, participating municipalities agree to contribute a specified amount of resources to the school board upon the proportion of benefits the municipalities propose to benefit from the arrangement (MGL 71:14B-C, 16).

The regional school budget process is similar to the municipal school budget process. The difference is that the amount of municipal resources necessary to operate the regional school system must be apportioned to and paid by its member municipalities (MGL 71:16B). If any municipality does not approve its fair share, then the law allows for an open regional meeting that has the power to approve the budget and assess its members accordingly.

6.33 STATE AID TO EDUCATION

On the municipal level, the primary source of funding public education is through the property tax. On the state level, several programs distribute school aid to cities and towns. The main goals of these funds are:

- To promote the equalization of educational opportunity in the public schools of the commonwealth;
- To reduce the reliance upon the local property tax in financing public schools; and
- To promote the equalization of the burden of the cost of school support to the respective cities, towns, regional school districts, and independent vocational schools.

The majority of state school aid is distributed through the Cherry Sheet in what is known as Chapter 70 funds. Monies are distributed according to a complex formula based upon student enrollment and financial capabilities and expenditures of the municipalities. In other words, poorer communities that have larger student enrollments and that devote more of their resources to operate the schools will receive more funding.

Another important program is the state-mandated Pupils in Special Needs Program, known popularly as Chapter 766, passed in 1972 (MGL 71B:1). Through this program the state reimburses cities and towns up to 110 percent of their expenditures for special classes, special equipment, and recreation programs for handicapped

children to ensure that they will receive the benefit of a public education (see Section 5.55). The state offers a rich array of financial programs to assist cities and towns to improve and maintain the integrity of their individual or regional school systems. For further information, you should consult your school superintendent and/or the Massachusetts Department of Education for specifics on all programs.

6.34 LIBRARIES

The public library is a valuable municipal asset. It may serve one or more primary roles in the community; it can be a center for popular materials, independent learning, references and information, formal education support, and community activities. Its tangible assets include buildings and grounds, library materials that encompass a wide spectrum of information in a multiplicity of formats, and specialized equipment that make possible the application of audiovisual and computer technologies.

Public libraries are, in most instances, governed by an elected or appointed board of trustees. Their primary responsibilities include long-term planning, presentation of the budget, and development of policies affecting all aspects of the library's operations. The library director is usually hired by the trustees and is responsible for the day-to-day management of the library. Usually twenty percent or less of the library's budget is directly expended for library materials. Costs of building maintenance and the development, acquisition, and organization of the collection account for the most significant portion of the library's budget.

Library directors and librarians are skilled in the acquisition, storage, and retrieval of information from a variety of sources, including books, periodicals, microforms, computer databases, and other formats. Many library directors and, frequently, members of their staff have masters degrees in library science.

Public libraries in Massachusetts need not stand alone. Most public libraries are members of the state-funded regional public library systems. These statewide systems support the local library's effort to meet the needs of its users. This includes interlibrary loans of materials and reference assistance in response to local requests. Many libraries also belong or have access to cooperatives of public, college, and special libraries that use automated technologies to identify materials in other libraries and to track their subsequent interlibrary loans. These automated library "clusters" also manage local inventory control of library materials, which dramatically improves services to patrons while improving local productivity. Public libraries may also request technical assistance from the Massachusetts Board of Library Commissioners, the state's administrative agency for libraries. The board is also a source of financial aid.

6.40 HOUSING AND DEVELOPMENT

Community development is a vital part of a community's structure. Selectmen have increasingly become involved in the issues of housing and industrial development. The economic and housing base of a community is central to its character and potential for the future.

6.41 ECONOMIC AND INDUSTRIAL DEVELOPMENT

Growth and the accompanying expansion of a town's tax base is encouraged in most communities. However, development can also strain municipal services, threaten natural resources, and change the quality of life in the community. Planning and coordination help a community effectively control these changes (see Section 6.50 on Planning, Land Use Control and Environmental Management).

The state's Executive Office of Communities and Development (EOCD) provides technical assistance to cities and towns and administers grants and other incentive programs to promote and support economic development. EOCD staff members are available to analyze proposals, help towns work with developers, and offer suggestions about how your town can protect its interests. In addition, EOCD can help your town qualify for various state and federal economic development programs. Some of these programs provide funds directly to your town; others provide economic incentives to commercial enterprises to locate in certain areas.

Among the programs administered by EOCD is the Commercial Area Revitalization District (CARD) program, which provides tax-exempt bonds and other financial incentives to businesses in approved revitalization districts. Areas designated as CARDS are older, established commercial areas that are experiencing disinvestment. Towns must submit a plan to EOCD in order to qualify for this designation.

EOCD also awards grants to qualifying communities under the federal Small Cities Community Development Block Grant program, the federal Urban Development Action Grant program, and the state Incentive Aid program, among others. The Economic Development Set-Aside Program provides low-interest loans to businesses locating, expanding, or starting up in communities that are eligible for Small Cities Community Block Grants. For more information on these and other programs, contact EOCD.

6.41.1 Development Commissions and Authorities

Towns may vote to establish development and industrial commissions to promote and develop industrial resources (MGL 40:8A). The commission must be composed of between five and fifteen members. Appointments are made by the town manager, if any, or else by the selectmen. Towns are also authorized by state law (MGL 40:5(47)) to

appropriate money to establish and maintain business and industrial commissions to promote business and industry.

Any town may, by vote of the town meeting, organize an industrial development finance authority to counter unemployment, the threat of unemployment, or lack of business opportunity (MGL 40D). The local industrial development finance authority may issue bonds on behalf of the town to finance industrial development facilities. The authority is governed by a board of five directors appointed by the selectmen. Two or more contiguous municipalities may, by town meeting vote, agree to consolidate their authorities into one (MGL 40D:2).

6.42 HOUSING

In the past, housing was considered outside the selectmen's jurisdiction. Housing authorities, planning boards, and zoning boards of appeals were generally left to determine housing issues on the local level. Recently, however, the growth in the demand for and cost of land and homes in Massachusetts has made affordable housing a critical issue in many communities.

The economic success of many sections and communities of Massachusetts has created higher incomes and cheaper credit, straining the demand for housing. We see the young and the old unable to afford to rent or purchase a home. Many people are forced to live outside the community in which they earn their living. Further, industry is finding it difficult to attract workers without affordable housing alternatives.

Declining federal aid is forcing Massachusetts communities to look beyond that source for the construction and rehabilitation of affordable housing. Thus, selectmen are coordinating local housing efforts with federal and state officials, developers, and the various boards and interest groups in their town.

6.42.1 Affordable Housing

The state has undertaken several initiatives in the past few years aimed at encouraging cities and towns to expand their base of affordable housing. Under Executive Order 215, issued in 1982, towns that are "unreasonably restrictive" in their policies toward low- and moderate-income housing are not eligible for state discretionary grants, including grants for economic development, management, and planning, as well as for some grants for transportation and environmental purposes.

To date, only a small number of communities has been penalized under Executive Order 215, and EOCD reports that towns have begun to take more initiative in the area of affordable housing. EOCD provides technical assistance in housing planning to all communities seeking to comply with the order, and then monitors the performance of communities against their plans.

A newer state program, called the Massachusetts Housing Partnership, is designed to support cities and towns that devise locally appropriate solutions to their housing problems. Under this program, towns present a plan to EOCD describing how they plan to collaborate with the private and non-profit sectors to create affordable housing. This is usually done through the selectmen's office. Municipalities that are designated "housing partnership communities" are given priority for a variety of state funds and programs, including planning grants, technical assistance, and development funds.

Among the grant programs available to eligible communities is the Municipal Advance Program, which provides funds to communities for technical consulting help. Money may be used to hire consultants to perform a range of tasks from conducting title searches to estimating construction costs to helping package sites for developments.

Several other programs are aimed at stimulating the growth of affordable housing; these are administered through the Massachusetts Housing Finance Agency (MHFA) (MGL 23). MHFA is a quasi-governmental, self-supporting agency established in 1968. Its several programs include: Moderate Income Affordable Homeownership Assistance, Multifamily Rental Housing, Neighborhood Rehabilitation, and State Housing Assistance for Rental Production.

6.42.2 Community Reinvestment Act

Another financing alternative exists through a community's local bank. As anchors in many communities, thrift institutions (local banks) were originally established to provide funding for local credit needs. In recent years, community-bank partnerships have been established with a mutual objective of affordable housing development.

To encourage thrift institutions to help meet the credit needs of their local communities, the U.S. Congress passed the Housing and Community Development Act of 1977. This act included the Community Reinvestment Act (CRA), which provides guidance to banks as to how the Federal Home Loan Bank Board will assess an institution's record in satisfying its continuing and affirmative obligations to help meet the credit needs of its local community, including low- and moderate-income neighborhoods.

CRA was developed in reaction to the public's concern that banks were moving away from their original role as providers of funds for individual home ownership. In 1978, the Federal Home Loan Bank System created the Community Investment Fund program, which aimed to create an attractive funding source for banks to help them meet the requirements mandated under CRA.

You are urged to contact EOCD, MHFA, and your community's banks to gain further information on programs available to your town to help meet its housing needs.

6.42.3 "Anti-Snob Zoning"

In an effort to encourage the construction of low- and moderate-income housing, especially in wealthy suburbs, the legislature in 1969 enacted what has become known as the "anti-snob zoning law." This law (MGL 40B:20-23, sometimes called "744") gives local zoning boards of appeals (and the state Housing Appeals Committee) broad power to override local zoning regulations that prevent construction of housing subsidized by the state or federal government.

Under the law, developers of subsidized housing developments may submit a single application to the board of appeals to build housing rather than filing a number of separate applications to different local boards. The board of appeals then notifies each local board, which must attend a hearing and submit its recommendations on the application. In any town in which ten percent or less of its housing is low- or moderate-income, the decision of the board of appeals may be overturned by the state Housing Appeals Committee. The committee may overturn the local board if it finds that the decision was unreasonable or "not consistent with local needs" or if conditions placed by the appeals board would make the housing project "uneconomic." The state can override local zoning unless a genuine safety issue is involved.

The anti-snob zoning law has come under heavy criticism from local officials, who contend that the law makes it nearly impossible to stop a subsidized housing project, even if it is poorly conceived. While the evidence is that the vast majority of projects under this law are eventually approved, towns do have some bargaining power in this process. Most developers, for example, would rather concede a few points to make the project acceptable to the town than have the development delayed by months of appeals. Negotiation between the town and the developer from the start is important to ensure success.

6.42.4 Housing Authorities

Any town is authorized to create at any time a housing authority of five members to undertake a variety of improvements in the town, ranging from the restoration of historic buildings to the construction of low-income, moderate-income, and elderly housing (MGL 121B:3). Two or more towns may also create a regional housing authority, with the approval of their municipal officers and of EOCD.

If a town votes to establish a housing authority, it may authorize the selectmen to appoint four out of five members to serve temporarily until other members are elected and qualified. Thereafter, four members must be elected. The fifth is appointed by EOCD, through authority delegated by the governor. The selectmen may make or receive charges against any elected member of a housing authority or may accept any member's resignation. The selectmen may also remove any housing authority member, after notice and a hearing, because of inefficiency, neglect

of duty, or misconduct in office. Housing authority members appointed by the state may be removed by similar procedures for similar reasons, but only by EOCD (MGL 121B:6 (5&6)).

Once established, housing authorities operate quite independently from the rest of town government. They have broad powers, including the power to sue and be sued, to receive loans, grants, and contributions from the federal government and other sources, to borrow and invest money, and to acquire and improve land. The financial operations of a housing authority are completely outside the regular financial operations of the town.

There are, however, a number of situations in which the housing authority may be required to consult with or seek approval from the selectmen. The selectmen's approval, for example, is required before the housing authority enters into agreements with the federal government to accept or borrow funds for authorized projects (MGL 121B:11). In addition, the board of selectmen (with approval of the town manager, if any) is considered the "local governing body" in cases where federal legislation requires approval or action of such a body (MGL 121B:1). No bond, vote, or other evidence of indebtedness or obligation or liability incurred by a housing authority is considered a debt or charge against the town (MGL 121B:17).

6.43 BUILDING

All buildings in the state are now subject to the state Uniform Building Code, which is administered by the state Board of Building Regulations and Standards, a division of the Executive Office of Public Safety. The code sets minimum standards for construction, alteration, repair,

demolition, and removal of buildings. The selectmen in any town may recommend that the board adopt more stringent rules and regulations for their town. In order to do so, the board must find that more restrictive standards are "reasonably necessary because of special conditions" in the town, and that the tougher standards conform with accepted engineering and fire prevention practices, with public safety, and with the general purposes of a statewide building code. The stricter standards are effective only after a public hearing and notice to the selectmen.

6.43.1 Building Inspector

The selectmen (or town administrator, if any) must appoint an inspector of buildings or building commissioner and as many other local inspectors as are necessary to administer the state building code and laws and regulations requiring buildings to be accessible to physically handicapped people (MGL 143:3; MGL 22:13A). The building inspector reports directly to and is responsible solely to the person or board that appointed him or her. The Massachusetts Building Commissioners and Inspectors Association can help you determine appropriate qualifications for the job. (In many towns, the building inspector also serves as the zoning enforcement officer, a job that requires special skills. See also Section 6.52 on Zoning.)

Two or more towns may join together and share the expenses of a building commissioner, a building inspector, and local inspectors. If the board of selectmen in two or more towns so vote, the towns may enter into an agreement with the county commissioners for the appointment and compensation of building inspection officials to serve the towns.

Exhibit 6.4

What Do Boards of Health Do?

Listed below are some of the major functions of boards of health as required by state law. Boards of health also have considerable power to take on additional responsibility.

- Report cases of communicable diseases to the state;
- Approve or disapprove subdivision plans;
- Grant permits for private drinking water wells;
- Assign sites for sanitary landfills, trash incinerators, waste storage or treatment plants, trash transfers stations or hazardous waste storage facilities;
- License septic systems;
- Regulate house drainage and sewer connections;
- Regulate sites and facilities involved in the disposal of septage;
- Enforce state laws and regulations concerning groundwater monitoring, septic systems, underground fuel and chemical storage, landfills and hazardous wastes and water supply contamination;
- Make rules and regulations for the disposal of garbage, offal and other offensive substances;
- Investigate and remove nuisances which may be injurious to public health; and
- Inspect certain activities and facilities.

6.50 PLANNING, LAND USE CONTROL, AND ENVIRONMENTAL MANAGEMENT

The land development boom affecting communities in Massachusetts is testing the adequacy of traditional zoning, other growth controls, and environmental protection measures. Although growth is often beneficial, it can also strain surface and ground water supplies, require new investments for wastewater disposal and solid waste treatment, threaten open space, recreation areas, historical sites, and agricultural lands, and aggravate existing problems with erosion, runoff, and flooding.

To cope with growth and its impacts, towns need to anticipate change so that they are prepared when a developer seeks approval for a condominium project or a company announces plans to open a hazardous waste facility in town. Not only should the town make full use of local authority under zoning and subdivision laws, but also it should look for innovative ways to guide development to meet community needs and desires.

Town officials are often unaware of the many tools they have available to protect environmental resources, tax stability, public health, and the character of the community. Boards of health, planning boards, conservation commissions, boards of appeals, and building inspectors all have significant powers that can be used to help your community regulate its growth. In addition, towns can use their extensive power under home rule to legislate their own approaches to land use control and environmental management. Often the biggest challenge is harnessing all this authority for the good of the town.

6.51 ROLE OF THE SELECTMEN

Typically, responsibility for land use and environmental issues is distributed among several town boards and officials, each with different, though sometimes overlapping, areas of jurisdiction (see Exhibit 6.2). As a selectman, your direct role in this area may be rather limited, depending on how your town government is organized. Selectmen can influence land use through their licensing powers (see Section 4.60 on Licenses and Permits). In addition, many boards of selectmen serve in one or more of the following capacities: as water and sewer commissioners, planning board, board of health, special permit granting authority, and site plan review board.

Even if your board does not have additional land use and environmental duties, you can exert some indirect influence in this area through your power of appointment. In most towns, your board is the appointing authority for the conservation commission, the board of appeals, and the building inspector, who usually serves as zoning enforcement officer as well. In a few towns, the planning board and the board of health are also appointed by the selectmen. In naming members to these important jobs, it is not only proper, but also good policy, to question candidates carefully about their philosophy toward development and about their understanding of their roles.

In addition, your board may be able to use its general policy-making powers to help set strategies and goals for the town concerning land use and environmental issues. Your success in assuming a leadership role in this area depends on local politics. Planning board members in the majority of towns are elected officials, and they may resist attempts by selectmen to get involved in their affairs.

One way to improve communications is to designate one of the selectmen as a liaison with the planning board and invite the planning board to do the same. Another positive approach is to get the planning board to co-sponsor annual meetings of the boards, officials, and citizens' groups involved in land use and environmental issues in your town. At the least, these meetings can foster a better understanding among the players about how their roles interact. At best, they can result in specific policies that can guide your town's growth.

6.52 ZONING AND LAND USE

Traditionally, towns have relied mostly on their zoning power to control development. Under state law, towns may adopt zoning bylaws at any time by a two-thirds vote of the town meeting (MGL 40A:5). Zoning bylaws typically divide the town into districts to separate inappropriate land uses and to promote harmony, maintain land values, and protect the public. Zoning defines permitted uses of land, prohibited uses of land, and uses of land that may be allowed by special permit. It also deals with dimensions of lots and locations of buildings on lots in the various districts.

If a community wishes to zone, it must use the procedures, format, and rights and duties set forth in the state Zoning Act (MGL 40A). The law requires the planning board to develop a zoning map and to hold a public hearing on any proposed zoning bylaw prior to town meeting. Proposed zoning bylaws must be submitted to the selectmen who must transmit them within fourteen days to the planning board. A two-thirds vote of town meeting is needed to enact a new zoning bylaw or to amend an existing one.

Some town officials confuse the zoning map, which must be prepared by the planning board in any town that has a zoning bylaw, with the official map, which is optional. Under state law (MGL 41:81E, F), a town may adopt, by action of the town meeting, an official map prepared under the direction of the planning board. The official map is a detailed engineering survey that shows such things as existing roads and open space and areas proposed for preservation or development. While an official map may be a good planning tool, it is costly to prepare and few towns have exercised this option.

The planning board may also undertake a master plan of the town (MGL 41:81D). This plan usually inventories all existing and desirable public ways, streets and street grades, public places, bridges and tunnels, viaducts, parks and parkways, playgrounds, sites for public buildings and structures, building and zoning districts, pierhead and bulkhead lines, waterways, railroad right of ways, transit

routes, location and flow of sanitary and storm sewers, public utilities, and all other community facilities. EOCD can assist your town in preparing an official map or a master plan.

6.52.1 Special Permits

Zoning bylaws may provide for specific types of uses that are only permitted in certain districts upon issuance of a special permit (MGL 40A:9). These permits are issued by a “special permit granting authority,” which may impose conditions, safeguards, and limits on their use. By law, the special permit granting authority may be the planning board, the board of appeals, the selectmen, or the zoning administrator. The law does not allow towns to create a new board for this purpose, but different boards can be made the special permit granting authority for different types of permits.

Uses most commonly subjected to special permit requirements are mixed-use developments, such as planned unit developments, cluster developments, and uses that are generally considered troublesome, such as parking lots, gas stations, and automobile repair garages. Special permits may be issued only after a public hearing held within sixty-five days after an application is filed.

The special permit granting authority must make a final decision within ninety days after the public hearing, or the permit is presumed to have been granted. Special permits require a two-thirds vote of boards with more than five members, at least four out of five votes on a five-member board, and a unanimous vote of a three-member board.

Zoning bylaws may provide that petitions for special permits be submitted to and reviewed by other town boards (such as the planning board and the board of health), which then make recommendations to the special permit granting authority (MGL 40A:11). This is a particularly good idea when the special permit granting authority is the board of selectmen, since your board may lack the technical expertise of these other boards. Even if your authorizing bylaw does not provide for such a review, you can establish a policy of seeking advice from other town boards prior to making a final decision on a special permit.

6.52.2 Managing Growth Through Zoning

There are a number of ways in which zoning can be used to manage growth. If your community’s planning has lagged behind development, for example, you may want to consider a zoning moratorium. A moratorium is a temporary limit on building permits, subdivision approvals, septic system permits, special permits, or particular uses (such as a commercial or residential development). Its purpose is to let your town take a breather from some type of land development, usually for one or two years. To be legal, a moratorium must be adopted through the Zoning Act, following the appropriate notice and hearing requirements. The community must justify the moratorium and use the time to conduct comprehensive planning, to reform local bylaws and regulations, and to decide how to build needed capital improvements.

Zoning is also the vehicle for phased growth control, which links growth to the ability of the town to fund public improvements. This approach limits new construction by restricting the timing of certain permits, such as subdivision approvals or building permits. One method is to allocate a percentage of land area or a number of lots that may be built each year. Another method is to assign priority points based on proximity to important public facilities and services such as fire, police, schools, sewers, water supplies, and roads.

Zoning also can channel growth by what are known as transferable development rights. Under this approach, the community saves land that needs to be saved, such as farms, shorelands, wetlands, open space, and historic sites, by allowing the owners to transfer building rights permanently to others, usually developers, who wish to enjoy additional density when they develop elsewhere in the town.

6.52.3 Site Plan Reviews

Over the years, several types of zoning designed to protect the environment or enhance the community have come into common use (see Exhibit 6.3). A popular approach is site plan review zoning. A town may create by bylaw a site plan review board (often, the board of selectmen or planning board is designated) with jurisdiction to control the design of major development projects that are not reviewable as subdivisions. Developments subject to site plan review commonly include industrial parks, large apartment and condominium complexes, shopping centers, and sports stadiums.

Unlike special permit granting authorities, site plan review boards cannot deny an application for development. However, they do have considerable authority to shape project design by placing conditions on the development and requiring developers to submit data not covered by the other permit programs. Site plan review boards can consider a range of issues, including possible impact of the development on traffic, open space, aesthetics, flood control, surface water, groundwater, water supply, and wetlands.

Because of the technical nature of the task, some boards of selectmen who are designated site plan review boards find it helpful to consult with the planning board on all site plans submitted. Even if such a review is not required by your authorizing bylaw, it is a good idea to establish a policy of seeking the recommendation of the planning board prior to making a final determination.

6.52.4 Subdivision Control

New developments in a community are generally governed by the Subdivision Control Act (MGL 41:81K-GG), which is completely separate from the Zoning Act. A subdivision is any division of a tract of land into two or more lots in which any lot does not have adequate frontage on a public way. Subdivision control regulations define the layout, specifications, and construction of such improvements as sewers and streets that are built by

developers, but ultimately turned over to the town.

The law is administered primarily by the planning board, although the board of health and the conservation commission also have regulatory authority when the subdivision may have an environmental impact. The extent to which planning boards may modify or deny subdivision plans is often misunderstood. Planning boards have extensive authority to adopt regulations governing the design and construction of roads, drainage systems, and utilities servicing subdivisions. However, these regulations must be in place before a developer submits a plan. Once a plan is submitted, the planning board must base its decision on its own official regulations. Just because a development is unpopular does not mean the planning board can turn it down.

6.52.5 Land Banks

One innovative, but controversial approach to preserving open space in communities is the land bank. Under this concept, towns assess a transfer tax or fee on all real estate sales and use the proceeds to buy environmentally sensitive land or to build affordable housing. The state legislature created a Nantucket Islands Land Bank in 1983 and a Martha's Vineyard Land Bank Fund in 1985. Various bills have been filed in the legislature that would permit any community in the state to establish a land bank by local option.

6.53 PUBLIC WATER SUPPLY

Although some towns still rely on private wells, most towns in Massachusetts are served by one or more public water supply systems. A public water supply is defined as a system that has at least fifteen service connections or regularly serves an average of twenty-five or more people at least sixty days a year. Except for communities in greater Boston that get water from Quabbin Reservoir through the Massachusetts Water Resources Authority, any town may vote to establish, maintain, and operate its own water supply or water distribution system (MGL 40:39A). Towns may purchase water from private companies or other towns (MGL 40:38).

Towns that establish a municipal water supply system may create a board of water commissioners consisting of three members, or they may authorize the selectmen to act as the board of water commissioners (MGL 40:39B). A number of municipal water departments and water and sewer commissions have been created by special acts of the legislature. Towns that have their own water systems may construct and maintain dams, wells, reservoirs, pumping and filtration plants, buildings, stand pipes, tanks, fixtures and other structures, and purification and treatment plants (MGL 40:39C). The costs of purchasing, developing, and enlarging public water supplies can be financed through the issuance of bonds. A community may also adopt a user fee schedule for providing water and sewer services to its residential and business customers.

Water commissioners or selectmen acting as such have exclusive control of the water system, subject to bylaws or any rules and regulations approved by the town (MGL 41:69B). For example, the commissioners or selectmen may establish, relocate, or discontinue hydrants and fountains; they can regulate the use of water and set and collect water usage rates. Income from the town's water system, however, must be appropriated to pay for only operating expenses and debt service relating to the water system (MGL 41:69B).

The state's Department of Environmental Quality Engineering (DEQE) has broad authority for monitoring and enforcing water quality standards for public water supplies and for approving sources of water, water systems, and treatment facilities. The state agency regularly tests all public water supplies to make sure they do not exceed the maximum contaminant levels set by federal law. If any water supply fails to meet the standards, DEQE can require treatment or direct that the public be notified, either in their water bills or, in the case of more serious violations, by newspaper, radio, and television notice.

Private wells are the responsibility of local boards of health. Buildings that need a source of water for which a municipal water supply is not available must get a permit from the board of health certifying that there is an adequate supply of potable water at the site. Although DEQE provides boards of health with assistance at their request, the agency has no direct authority over private wells.

DEQE has several grant programs available to help communities with their drinking water supplies. For example, the DEQE may provide funds to acquire land, water, and easements for the protection of ground water, to solve contamination problems, to construct filtration plants, and to provide information and technical assistance to consumers.

6.53.1 Ground Water

In addition to its role in monitoring drinking water, DEQE has extensive authority under state law to protect the state's ground water from pollution (MGL 21:26-53). Under the ground water discharge permit program (MGL 21:43), DEQE approval is needed to discharge a wide range of pollutants, including sewage, commercial, industrial, or agricultural waste, or runoff (MGL 21:43).

DEQE also has authority under the state Water Management Act (MGL 21G) to manage ground and surface water as a "single hydrological system" and to ensure, where necessary, "a balance among competing water withdrawals and uses." The act also addresses water supply shortages and emergencies. Under this law, DEQE will eventually require those who use large quantities of ground water to apply for a permit. After January 1, 1994, no ground water extraction permit will be issued unless the municipality in which the water is to be used has obtained approval of a water resources management plan.

6.54 SEWAGE DISPOSAL SYSTEMS

6.54.1 Central Sewage Systems

A town is authorized to lay out, construct, maintain, and operate a system of sewers and main drains in public and private ways as necessary for the disposal of sewage. Sewage is defined as wastewater from homes, public buildings, and commercial or industrial developments. No sewer system can be constructed without surveys or reports. The plan for the sewer system also needs approval by the state Department of Public Health (MGL 83:1).

The selectmen, sewer commissioners, or road commissioners can “take” or purchase land needed for constructing approved sewers or sewer plants (MGL 79 outlines eminent domain for a community) (see Section 4.91.1). The description of the community’s main drains and common sewers are to be kept in the town clerk’s office or a town office set forth by the town in an ordinance or bylaw (MGL 88:2).

Through a public hearing and with approval by DEQE, a town may designate an area for the treatment, purification, and disposal of sewage (MGL 83:6).

6.54.2 Septic Systems

Towns may issue permits for the removal of water and garbage in areas where municipal sewage systems are not available. The local board of health issues these permits. DEQE sets minimum standards, but the board of health may adopt more stringent sanitary codes and health regulations when local conditions warrant (MGL 111:31). A town may provide facilities for the disposal of sewage and water with approval of DEQE (MGL 111:31D).

6.55 SOLID WASTE

Solid waste disposal has become a critical issue for Massachusetts cities and towns as many communities approach capacity in their existing landfills. State regulations designed to protect ground water and other environmental resources make finding suitable sites for disposing of wastes especially difficult. One alternative to burying wastes is resource recovery, a process that burns solid waste to produce steam or electricity. Currently there are resource recovery plants operating in Pittsfield, North Andover, Saugus, and Millbury; several others are planned or under construction.

Landfills, incinerators, and solid waste transfer stations are regulated by DEQE, which has issued regulations to prevent air, land, and water pollution and to abate these conditions when they occur. (MGL 111:150A). DEQE in cooperation with the Department of Public Health is responsible for establishing rules and regulations governing the siting of landfills, refuse transfer stations, refuse incinerators, refuse recovery facilities, refuse composting plants, or plants for the treatment, storage, or final disposal

of refuse. DEQE approval is required for all landfills. Towns cannot select a site that is a wetland or subject to flooding, or that does not provide a minimum distance to groundwater and protection of all sources of public and private water supplies.

Facilities that handle and dispose of solid waste also need a permit (known as an “assignment”) from the local board of health (MGL 111:150A). The board may impose conditions on this permit and may adopt regulations concerning sanitary landfills.

6.56 HAZARDOUS WASTE

Comprehensive federal and state laws and regulations govern the location and operation of hazardous waste facilities. In addition, local boards of health have authority under state law (MGL 111:150B) to assign sites for facilities that store, treat, or dispose of hazardous waste. To grant a site assignment, the board must find that the facility imposes no significantly greater danger to the public health or safety than other comparable industrial or commercial enterprises.

Facilities for storing, treating, or disposing of hazardous waste are regulated by permits from DEQE under the Hazardous Waste Management Act (MGL 21C). New or expanded facilities also need approval of the Massachusetts Hazardous Waste Site Safety Council (MGL 21D). Releases of hazardous wastes to the environment trigger the state Superfund law (MGL 21E), which governs clean-up and liabilities. Generators of hazardous wastes, such as manufacturers, are subject to registration requirements and many controls governing management of wastes. Transporters of hazardous waste need licenses from DEQE.

While hazardous wastes are extensively regulated by state and federal programs, there is no comprehensive regulation for business activities that use hazardous materials. In general, federal and state laws permit reasonable local regulations of activities involving hazardous materials (see Section 6.67 on “Right to Know” Law).

6.57 UNDERGROUND TANKS

Underground tanks that store chemicals or petroleum products not covered by hazardous waste management laws are regulated by a different program. The federal LUST program (for Leaking Underground Storage Tanks) is designed to prevent, detect, and correct leaks in underground tanks. Under the law, tank owners and owners are responsible for taking corrective action in the case of a leak and are liable for damages in the event of an accidental release. In Massachusetts, the LUST program is administered by the state Department of Public Safety (DPS), which has issued regulations governing the design, installation, maintenance, monitoring, and removal of underground tanks.

In most cases, federal law and state regulations set minimum standards for underground tanks and do not cover smaller fuel tanks at all. Your town may adopt its own bylaws setting tougher standards. Typically, these bylaws authorize a local board or agency (usually the board of health or fire department) to conduct an inventory of tanks and require owners to register underground tanks. Some communities have gone further and required that old tanks be replaced.

6.58 ENVIRONMENTAL ENHANCEMENT

6.58.1 Wetlands and Floodplains

Wetlands and floodplains are protected under a variety of federal and state laws and regulations and local bylaws. In Massachusetts, wetlands are broadly defined to include banks, beaches, dunes, wet meadows, and flats in addition to the classic vegetated wetlands like swamps, bogs and marshes. The state Wetlands Protection Act (MGL 131:40) and DEQE regulations cover basic procedure for protection of wetlands and floodprone areas. Currently, more than 50 communities have adopted local wetlands bylaws to supplement these regulations.

Protection of wetlands in towns is the job of the conservation commission. The conservation commission has the authority to issue permits, often with restrictions and after a hearing, for almost any work that affects wetlands. These permits, or “orders of conditions,” may restrict or prohibit work in order to protect ground water, drinking water, shellfish, fisheries, pollution control, storm damage prevention, flood control, and, since November 1987, wildlife habitat. Decisions of the conservation commission may be appealed to DEQE.

6.58.2 Air Pollution Control

Air quality is regulated on the federal level by the EPA and on the state level by the Division of Air Quality of DEQE. Federal and state laws and regulations impose permit requirements and emission limits for certain stationary and moving air pollution sources and certain types of emissions (MGL 111:2B, 31C, 142A-F). Most enforcement is done by the state, but local officials such as police departments, fire departments, boards of health, and building inspectors have the authority to enforce air pollution control laws and regulations.

Towns also have the authority under state law (MGL 111:31C) to adopt air pollution control programs. This includes the power to regulate the emission of smoke, particulate matter, soot, cinders, ashes, toxic and radioactive substances, fumes, vapors, gases, industrial odors, and dusts that constitute a nuisance or a danger to public health, or that impair public comfort and convenience. The program is run by the board of health or other legal authority established for the purpose by a town vote. Local regulations must be reviewed at a public hearing and approved by DEQE.

Boards of selectmen may authorize the town fire department to issue not more than one permit a year for a ceremonial bonfire to mark the observance of a significant event. Bonfire permits may only be issued to a municipal department or to a civic, fraternal, or veterans organization.

6.58.3 Preserving Your Town's Beauty

Various land use controls available to towns are designed primarily to protect the natural beauty of the community. Aside from the measures discussed here, you should also consider land banks (see Section 6.52.5).

Scenic Roads, Mountains, and Rivers. Towns are permitted by law (MGL 40:15C) to designate any road, other than a state highway, as a scenic road. A numbered route may be designated a scenic road only if its entire length is located within the town boundaries and none of it is owned or maintained by the state. The designation must be requested by the conservation commission, the planning board, or the historical commission.

This designation means that the planning board must give its written consent, after a hearing, before any work can be done on the road that involves cutting or removal of trees or the tearing down or destruction of stone walls.

The state Scenic Mountains Act (MGL 131:39A) permits cities and towns in Berkshire County, by local option, to regulate development in mountain areas and protect watershed and scenic qualities.

The state Scenic Rivers Act (MGL 21:17B) permits the state Department of Environmental Management to adopt orders restricting or prohibiting dredging, filling, and otherwise altering or polluting scenic or recreational rivers.

Billboards and Signs. Billboards are regulated on the state level by the state Division of Outdoor Advertising and may be regulated by local zoning or other bylaw. Billboard owners must get a state permit each year for each billboard. State regulations prohibit the state from approving a permit for a billboard that is in violation of local requirements and state law.

State law (MGL 93:29-33) allows towns to regulate and restrict billboards and other signs by bylaw, as long as the local requirements are not inconsistent with state law or regulations. Courts have upheld the right of Massachusetts communities to ban billboards completely as well as in certain areas by zoning bylaw. In addition, towns may elect to regulate on-premises signs either under the state Zoning Act or by general bylaw (MGL 40:21).

Shade Trees. Towns are required to have a tree warden (MGL 41:1,106), unless the duties of that job have been delegated by the town to a board of public works (MGL 41:69C-F) or to an office of lands and natural resources (MGL 41:69G). The tree warden has broad authority to plant, trim, and remove public shade trees and shrubs on town streets (MGL 87:2). (See Section 6.24.)

All trees that border public ways are public shade trees. If there is any doubt about the boundary, the presumption is that the tree belongs to the town unless someone can show

otherwise (MGL 87:1). Under state law, towns may appropriate money for the tree warden to plant shade trees along public ways or up to twenty feet away to improve, protect, shade, or ornament the street (MGL 87:7). Trees in public parks are usually under the control of the park commissioners, although the tree warden may be asked to care for some or all park trees.

Public shade trees may not be cut down or removed by anyone except the tree warden or his or her deputy unless the warden gives written approval. A public hearing is required before any public shade tree is removed at all.

6.60 PUBLIC HEALTH

Years ago, selectmen's main concern with public health was to prevent the spread of infectious disease. Improvements in sanitation along with major breakthroughs in the medical field have lessened this threat, but citizens have become increasingly aware of such issues as the consequences for public health of environmental pollution. Today, the field of public health covers a broad range of issues ranging from mental health to hazardous waste. Health officials in towns are often involved in numerous public health activities, such as holding flu vaccination clinics, inspecting nursing homes, and licensing septic systems (see Section 6.50 on Planning, Land Use Control, and Environmental Management).

6.61 HEALTH OFFICIALS

On the local level, boards of health have the primary responsibility for protecting public health in Massachusetts. Under state law, the selectmen act as the board of health if the town has no other arrangement. Selectmen also can be authorized by town meeting to appoint a board of health (MGL 41:1,21). More often, towns decide to have a separate board of health consisting of three or more elected members or to establish a health department with a commissioner of health and an advisory council, appointed by the selectmen (MGL 111:26A). Several clusters of towns have elected to form regional health districts administered by a director of health (MGL 111:26C). Towns may also specify in their home rule charters a different method of delegating health duties.

Members of boards of health are not required by law to have any medical or health training, although in practice many often do. Boards of health may appoint a physician and other staff to advise and assist them. (MGL 111:27). Even in those towns in which the selectmen serve as the board of health, the field has become so complex that professional assistance is practically a necessity. Selectmen are authorized by law to appoint a health inspector, and in towns of less than 3,000 people, that person may be the school physician (MGL 41:102, 102A, 102B). Most towns employ a health inspector and a public health nurse, either full-time, part-time or on a contract basis. Qualifications for a health inspector include licensure as a registered sanitarian (R.S.). Many towns also require that the inspectors be certified health officers (C.H.O.).

6.62 ROLE OF THE BOARD OF HEALTH

Boards of health have a wide range of responsibilities and functions specified by state law (see Exhibit 6.4). Boards of health may operate according to regulations of either the state Department of Public Health (DPH) or the state Department of Environmental Quality Engineering (DEQE).

In addition to their specific legal duties, boards of health are required to enforce the state Sanitary Code, which establishes minimum standards for day camps, swimming pools, and food service establishments (MGL 111:127A). The code permits any board of health or other health authority to adopt rules and regulations stricter than those contained in the code. Boards of health are also the local enforcement agents for the state Environmental Code, which establishes minimum standards for such items as sewage disposal. Local boards of health may adopt more stringent regulations as local conditions warrant.

Boards of health have extensive power to adopt and enforce any reasonable health regulation (MGL 111:31). Some towns, for example, have instituted smoking bans, while others have set standards for noise pollution. Boards of health may issue orders declaring that an emergency exists and requiring that certain actions be taken. They may order the fluoridation of water supplies, adopt and enforce local regulations for the control of air pollution and for the management of animal stables. (For a more complete discussion of the powers and duties of boards of health, see *Legal Handbook for Boards of Health*, published by the Conservation Law Foundation of New England Inc., 1982.)

6.63 RELATIONSHIP BETWEEN SELECTMEN AND HEALTH OFFICIALS

Because of the range of their authority, health officials can cooperate with selectmen to shape the standards and character of the community. Good communications is key and can be nurtured by scheduling routine, joint meetings of the selectmen and the board of health or by reserving a regular slot on the selectmen's agenda for the chief health official in your town. One member of your board should take on the role of liaison to the board of health to ensure optimal communications.

Selectmen are frequently the first ones to hear about a potential public health problem. Citizens may call to complain about a foul-smelling discharge from a factory or a dead animal on a road. By the same token, you will be the one who is blamed if the problem isn't rectified promptly. Established contacts are necessary to ensure problems are cleared up quickly and efficiently.

6.64 COMMUNITY HEALTH

State law permits boards of health or selectmen acting as boards of health to establish and maintain dental, medical, and health clinics and to conduct general education campaigns relating to health matters (MGL 111:50). Many of the direct health services departments are aimed at adults and children who are unable to obtain private medical care. Many towns now provide flu vaccination clinics, well-baby clinics, hypertension screening, and screening for blood lead poisoning, among other community health services. In some cases the state, through the Department of Public Health, will provide medical supplies and equipment for these clinics, although administrative costs must be borne by the town. Some towns have found they can reduce costs of these services by using volunteers and holding clinics in churches or other donated space.

The local health authority is required to notify the Department of Public Health within twenty-four hours of the discovery of a case of a communicable disease (MGL 111:112, 113). Every board is required to appoint a person, who may be a board member, to maintain a record of diseases and to give notice in each case to the department. The board of health must also notify the school committee of all reported diseases that are dangerous to the public health.

6.65 ENVIRONMENTAL HEALTH

Boards of health have broad authority to regulate in environmental areas where there is a risk of adverse health consequences (see Section 6.50 on Planning, Land Use Control and Environmental Management). Among other things, boards of health have the power to enforce state laws and regulations concerning groundwater monitoring, septic systems, underground fuel and chemical storage, landfills, hazardous waste, and water supply contamination.

One major area of responsibility is the regulation of septic systems. Many boards of health have their own regulations for septic systems, which may be identical to or more restrictive than the minimum standards adopted by DEQE in Title 5 of the state Environmental Code. Boards of health regulate the removal, disposal, and transportation of septage (MGL 111:31A-B 31D, 143). The board of health may make and enforce regulations concerning house drainage and connection with common sewers (MGL 111:127).

The board of health is required to approve the sites for solid waste disposal facilities (MGL 111:150A) and hazardous waste facilities (MGL 111:150B). A permit is needed for transportation of garbage or other offensive substances through town streets (MGL 111:31A). Preliminary and definitive subdivision plans must be submitted to the board of health for approval (MGL 41:81U).

6.66 NUISANCES

Boards of health and selectmen have the comparable authority to take action in the removal of nuisances. A health nuisance is defined by law as a source of filth or a cause of sickness. State law gives the board of health the power, after a public hearing, to grant a site assignment to a business that may result in a nuisance or harm to the inhabitants, cause injury to their land, or cause offensive or dangerous odors (MGL 111:143). Boards of health are also authorized to examine all nuisances which may be injurious to the public health and to destroy, remove, or prevent them (MGL 111:122). A separate section of law gives selectmen the same nuisance abatement powers as boards of health (MGL 139:3).

Selectmen may declare a burned, dilapidated, or dangerous building, structure, or vacant lot to be a nuisance. After holding a public hearing and giving written notice to the owner of the property or his authorized agent, the selectmen may order the nuisance altered, disposed of, or regulated. If the owner fails to comply, the town can sue for the cost of removing the building or for the cost of another solution (MGL 139:1, 3A).

6.67 "RIGHT TO KNOW" LAW

Concerned that employees understand the health and safety risks involved in their jobs, the Massachusetts legislature in 1983 passed the right-to-know law (MGL 111F), which requires cities and towns to respond to citizens' requests for information on hazardous substances used by local employers in the course of their routine work. Not only does your town have responsibility for enforcing this law, but as an employer your town is also subject to its terms. (State regulations regarding this law may be found in the Code of Massachusetts Regulations 44:21.00.)

The law requires each town to have a "municipal coordinator" who is in charge of responding to requests for information. The selectmen designate the municipal coordinator, who is usually the fire chief, the fire commissioner, the public health commissioner, or the public health officer. In small towns, the selectmen may designate one of themselves to be municipal coordinator.

The right-to-know law was the first major state-initiated program passed following the enactment of Proposition 2½. This tax legislation requires the state to reimburse cities and towns for all additional direct costs they incur from implementing programs mandated by the state (see Section 8.45.1 on State-Mandated Programs). Towns are eligible for reimbursement by the state for 100 percent of the costs of all activities that are required by the right-to-know law. These include both activities performed by towns as employers and activities performed by municipal coordinators. The Budget Bureau of the state Department of Administration and Finance can tell you which activities are reimbursable under the law. Towns are expected to submit quarterly expense forms to the state.

6.70 HUMAN SERVICES

Human services comprise a variety of publicly funded programs dedicated to improving the quality of life for citizens. Vulnerable groups are particularly targeted by programs for the elderly, the mentally retarded, adolescents, and the physically disabled.

Human services developed from efforts of both the public sector and private agencies. Although the tradition of local involvement is strong, most notably in health, recreation, and elderly programs, many towns have treated community-centered problems on an as-needed basis. Examples include setting up a youth commission to deal exclusively with the needs of young people and creating a council on aging to serve only the elderly. This approach fails to identify gaps and duplications in services and makes it difficult to evaluate the quality of programs being offered.

Massachusetts towns are recognizing the value of an integrated approach to human services that enables community leaders to assess existing programs and plan for the future. A number of towns have created human services departments or appointed human services coordinators. In many cases, the impetus has come from a selectman whose curiosity about the community's needs and existing human services programs sparks the creation of a citizens' advisory board.

6.71 ROLE OF THE SELECTMEN

As a selectman, your role in human services planning and coordination will vary depending on how your town is structured. You should guide the initiative to ensure that the citizens' interests are represented on the state and regional levels.

Your board should cooperate with state legislators to develop the funding and the expertise for new programs. In addition, you should regularly convey your local human services needs to your senators and representatives and to area representatives of various state human service agencies, such as the Department of Social Services, the Department of Mental Health and the Department of Elder Affairs. That way, when state programs are enacted, they will reflect the true needs of the communities. Selectmen are responsible for keeping legislators informed.

For towns in strong county systems, participating in the human services committee of your county commission may be the best way to monitor the delivery of services.

Many towns have found membership on the Local Officials Human Services Council (LOHSC) very useful. An affiliate of the Massachusetts Municipal Association, the organization consists of people who hold human services responsibilities in their communities. The group meets monthly to share ideas concerning local human service delivery, state programs and policies, and possible funding sources. In addition, the group serves as a lobbying force with state officials.

6.72 COMPONENTS OF A HUMAN SERVICES PROGRAM

The composition of a human services program varies widely from town to town, depending on community needs and values. Some towns offer elderly transportation, while others emphasize day care. Some choose to include veterans' affairs as part of their overall human services function, while others treat it separately. The United Way of America Services Identification System (UWASIS) provides a listing of the types of human services offered by many towns. This listing may be useful in determining the services needed.

Listed below are some of the more common programs and services offered at the local level and target groups your town may wish to serve:

<i>Programs/Services</i>	<i>Target Populations</i>
Employment and Training	Elderly
Transportation	Children
Alcohol/Drug Abuse	Special Needs Clients
Information/Referral	Adolescents
Food and Nutrition	Low-Income Families
Mental Health Counselling	Linguistic Minorities
Day Care	Mentally Ill People
Health Clinics/Home Care	Battered Women
Mediation/Consumer Advocacy	Veterans
Emergency Shelter	Handicapped People
Fuel Assistance	

6.73 ASSESSING YOUR TOWN'S NEEDS

Without infinite resources, your town must make choices about which services it can provide. Start with a comprehensive examination of its human services. Establish a committee of interested citizens, including representatives from agencies that now serve the community. A selectman should serve on the committee to make sure its work coordinates with the town's overall planning process.

You can seek assistance from a local college or university in inventorying needs. Or, local citizen groups like the League of Women Voters could be asked to assist this process. Research methods include interviewing current providers, holding public hearings, conducting surveys, and meeting with other communities that have analyzed their human services needs.

6.74 LEVELS OF INVOLVEMENT

The role of your town in human services is most obvious when the town serves as the provider with its own staff and facilities. For example, your town may spend tax dollars to employ a health nurse, a town recreation director, or a social worker. Towns also participate in the delivery of human services in more indirect ways. Your town may financially support a private mental health center, offer free space to a day care center in a town building, or secure state or federal funding for a community residence.

Towns often perform these functions:

Funding. The town provides financial support or in-kind contributions to a private organization that provides services to the local community. This might include a youth agency or a community mental health center.

Planning. The town develops policies and sets priorities by conducting needs assessments and working to coordinate human services programs that are already available. These activities might include conducting citizen surveys, agency questionnaires, discussions with agency directors or meetings with members of the community.

Coordination. The town uses its influence and staff to encourage joint efforts and programs both inside and outside of government.

Advocacy. The town negotiates with state agencies and community groups on behalf of residents who need certain services.

Evaluation. The town monitors and provides planning help to human service agencies.

Publicity. The town provides information to residents about the availability of services.

Other. The town modifies its policies and uses its influence to help meet different needs. For example, your town might authorize a zoning change to permit a group home in a certain neighborhood or provide tax abatements for disadvantaged groups.

6.75 MANAGING HUMAN SERVICES

In Massachusetts, towns have developed a variety of methods for coordinating human services activities. Although some of these involve a change in the local charter, others can be accomplished by simple administrative action. There is probably no “best” approach to managing human services since much depends on the character of your town. Some approaches now in use in the state are:

Human Services Department. A new department is created that incorporates all the specialized human service agencies and functions. The degree of central control varies with each town. In some cases, the individual agencies remain largely autonomous; in others, the department exercises considerable control. Budgets may be submitted for individual agencies or for the department as a whole. Municipalities that use this structure include Arlington, Falmouth, and Newton.

Existing Department Assigned Human Services Responsibility. An existing department, usually health, recreation or community development, assumes authority over human services. This may include some or all of the town’s specialized human services agencies. Natick, Worcester, and Malden use this structure.

Human Services Coordinator. A staff person is assigned the task of overseeing human services, but has little or no line authority over existing human service agencies. The staff person may be assigned exclusively to human services or may have other responsibilities as well. In Amherst, the assistant town manager coordinates human services. In Lexington, Brockton, and Everett, the coordinator’s job is exclusively human services.

Co-location. All the town’s human service agencies are brought together into one physical location. Although there may be little or no administrative linkage, the theory is that the proximity will encourage informal contacts, referrals, and cooperative planning. Amherst has such a center in a new building. Concord allows groups to use a recycled building.

Contracting with Outside Agencies. A nonprofit agency is hired to plan and deliver services. Under this approach, the town relinquishes some control in exchange for freedom from hiring and supervisory responsibilities.

Social Worker. The town hires a social worker to keep in contact with vulnerable citizens, and to act as both a case manager and an advocate. This method is often found in towns that have done little needs assessment or planning. The social worker must offer prompt response, information, and referral. Towns that use this method include Weston, Wayland, and Framingham.

Regional Approach. Contiguous communities create regional agencies or fund existing agencies to provide human services planning, management, and program management. This approach is used on Martha’s Vineyard, where each of the six towns contributes to an independent community service agency.

Citizen Commissions. A citizen commission may act alone as advisers to the selectmen or may function in conjunction with any of the other models. The goal of a commission is to allow citizens a voice in policy development and priority setting.

6.80 PARKS, RECREATION, AND OPEN SPACE

Massachusetts towns have considerable flexibility in the way they manage public parks, playgrounds, and other recreational facilities. Depending on how your town is organized, you may find responsibility for parks and recreation in the hands of a single board or split among two or more boards and commissions. In some smaller towns, the selectmen serve as the board of park commissioners.

State law authorizes towns to appropriate money for a range of recreation-related purposes, including the construction and maintenance of swimming pools, municipal golf courses, skating rinks, gymnasiums, and beaches (MGL 40:5). Towns have considerable freedom to choose the recreational programs they will provide and the fees they will charge for the programs. The state Department of Public Works assists cities and towns in developing and constructing bikeways, bike lanes, and bicycle parking facilities for commuter and recreational use (MGL 90E). Other state agencies have different recreational programs.

Many Massachusetts towns now have professionally trained parks and recreation officials to handle their day-to-day operations. On the national level, the National Recreation and Parks Association certifies universities and colleges that offer degrees in the field. Its statewide counterpart, the Massachusetts Recreation and Park Association (MRPA), provides continuing education and training for professionals already in the field. Both organizations are available to help towns hire qualified personnel.

6.81 ROLE OF THE SELECTMEN

If you and your fellow selectmen serve as board of park commissioners, you have all the powers and duties granted by law to that body. Legislation passed in 1985 specifically gave selectmen, acting as park commissioners the power to approve or disapprove plans by the Metropolitan District Commission to take lands for parks by eminent domain (MGL 45:2).

If responsibility for parks and recreation is vested with other boards in town, your formal role in this area is very limited. As a practical matter, however, you need to know who is responsible for parks and recreation in your town and to have a good working relationship with him or her. When citizens call (as they inevitably will) with complaints about park security or playground noise, you need to know who to call to get the problem solved. The selectmen's office may also be useful in coordinating interdepartmental activities, for example, when the water department needs to drill a test pit on park land.

6.82 PARKS AND PLAYGROUNDS

State law draws a distinction between public parks and playgrounds that has implications for the way these lands may be managed. Land that was originally acquired for park purposes (including town commons) is generally recognized by law to be held for all members of the public, not just for residents of your town. For this reason, the state legislature has final authority over what is done with it.

Playgrounds or land that was originally acquired for recreational purposes, on the other hand, are under the control of whatever town board or commission has been so designated by town meeting, special act, or home rule charter. State law gives the agency in charge of public playgrounds and recreation centers extensive authority to acquire, lease, and use land and buildings for recreational activities.

6.82.1 Parks

Every town must have a board responsible for overseeing public parks. A town may elect a board of park commissioners or authorize its planning board, department of public works, or road commissioners to perform those functions (MGL 45:2; MGL 41:81C). Unless your town has elected a board of park commissioners or specifically authorized another agency to act as one, it is the selectmen who are in charge of parks.

Boards of park commissioners assume generally the same authority over roads and trees in parks that selectmen, road commissioners, and tree wardens have in other parts of town (MGL 45:5). They may lay out and improve public parks, make rules about how town parks may be used, and appoint engineers, surveyors, clerks, and other personnel to help with park maintenance. Subject to appropriation, they also have the power to conduct park programs and recreational activities at places other than public parks (MGL 45:5). In addition, boards of park commissioners have the power to hire park police officers. Violations of park and playground rules and regulations by law may carry a fine of not more than \$200 (MGL 45:24).

Land for parks may be acquired by purchase, gift, or eminent domain (see also Section 4.90 on Town Property and Boundaries). Once a park is acquired, however, it takes a special act of the legislature (as well as town meeting approval) to sell, lease, or use it for any other purpose. By the same token, only the legislature has the authority to change the use of any town park or common. Land taken for or held as a park must be kept open and maintained as a public park. In most parks, legislative approval is needed to build any structure larger than 600 square feet. However, towns may erect structures for shelter, refreshments, and other purposes in parks of at least 100 acres as long as they do not pose a fire hazard to buildings outside the park. Boards of park commissioners have the power to allow hunting on parks during hunting season (MGL 131:59).

6.82.2 Playgrounds and Recreation Centers

While playgrounds and recreation centers may be administered by the same board that handles parks, towns have a number of alternatives under state law (MGL 45:14). They may delegate these duties to the school committee, the planning board, or a separate playground or recreation commission; divide the duties among a combination of these boards; or create a new committee with both representatives from existing boards and at-large members. Other arrangements are also possible by local charter or special act.

The board in charge of playgrounds and recreation centers is responsible for conducting and promoting recreation, play, sport, and physical education, and it may charge admission for these activities (MGL 45:14). The board may acquire (by purchase, gift, or eminent domain) or lease land and buildings for recreational purposes, or it may use land and buildings the town already owns. It may also construct and equip buildings on land owned or leased by it. These buildings may be used for town meetings and, with the consent of the board in charge, for any public, social, educational, or recreational purpose.

The board in charge of playgrounds and recreation may also carry on its activities on other public property, with consent of those in charge, or on private property, with the consent of the owners. Towns are also allowed by law to conduct public recreational activities outside the town limits. Two or more towns may also vote to provide joint recreational programs (MGL 45:14).

6.83 OTHER TOWN LAND

Other town land under the control of various town boards may be used for recreation (among other uses). School committees are permitted to conduct educational and recreational activity on school property under their control and, when it is in the interest of the community, must allow any individual or association to use school property for educational, recreational, social, civil, philanthropic, and similar purposes (MGL 71:71). Conservation commissions have authority to prepare a "passive outdoor recreation plan" that indicates public land that may be used for such activities as walking and hiking (MGL 40:8C).

Natural bodies of water greater than twenty acres, known as "great ponds," are generally open to the public for recreation unless they are being used as a source of water supply. The public must be given reasonable access to great ponds, but towns may make and enforce rules and regulations concerning fishing, hunting, and boating (MGL 131:45). While motorboats, snowmobiles, and other recreational vehicles are regulated by the state Department of Fisheries, Wildlife, and Recreational Vehicles, towns may by bylaw or regulation limit or forbid their use on town land (MGL 90B:33).

Towns meetings may vote to purchase or take by eminent domain lands within town limits as "public domain" for use as a town forest or to protect the town's water supply (MGL 45:19). They may also appropriate money and accept gifts for that purpose. Towns that own a public domain may lease any building on it or erect buildings for public instruction or recreation (MGL 45:22).

About half the towns in Massachusetts have created town forests. In most cases, the town forest is managed by a town forest committee, appointed by the selectmen (MGL 45:21). A town may alternatively designate the conservation commission as the forest committee or direct the conservation commission to appoint a forest committee (MGL 45:21).

7.00

GENERAL ADMINISTRATION

7.10 PUBLIC UTILITIES AND CABLE TELEVISION

The state Department of Public Utilities (DPU) bears the major responsibility for regulating utilities in Massachusetts. However, cities and towns have some control over the construction and placement of utility poles and transmission lines. In addition, municipalities in Massachusetts have specific authority under state law to initiate complaints to the DPU about utility rates or service.

For detailed information about the role of local officials, it is best to refer to the chapter of state law governing the particular utility: cable television (MGL 166A); gas and electricity (MGL 164); telephones, telegraphs, and television (MGL 166); and water companies (MGL 165).

7.11 TRANSMISSION LINES

Selectmen have no control over the construction of high tension or other transmission lines except where those lines cross a street. Electric and power companies are required by law (MGL 166:22) to apply in writing to the selectmen for permission to construct transmission lines on, under, or across a public way. After such a petition is filed, your board must notify all abutting property owners, then hold a public hearing. Following the hearing, you may grant a location for the line specifying the location, the kind of poles or abutments, the number of wires, and the height to which the wires or cables may run.

It is possible to deny a street crossing, but you are almost certain to wind up in court. Recent cases suggest that selectmen have the right to deny a crossing if it would present a physical inconvenience or danger to the traveling public or if it would create an annoyance arising from aesthetic considerations, but the evidence must be well-documented. In addition, once you have granted permission, you cannot then revoke it. If the transmission line will pass through several towns, your board's denial or failure to act within three months on a street-crossing petition may be appealed to the DPU (MGL 166:28).

Transmission lines cannot be placed on land taken by eminent domain until the company has acquired from the selectmen all necessary rights in highways, public places, parks, and reservations in the towns through which the line will pass (MGL 164:72).

7.11.1 Private Lines

Selectmen may allow anyone to construct for private use telephone, telegraph, television, or electric lines upon, along, or under streets (MGL 166:23-25). Once such a line is built, the poles and structures connected with it become the property of the town and are subject to regulation and control by the selectmen (MGL 166:24).

7.11.2 Electricity in Bulk

Selectmen may impose whatever terms they believe to be in the public interest in consenting to the laying, erecting, maintaining, or using of wires over or under streets where the purpose is to provide electricity in bulk (MGL 164:90). The electric company may appeal this decision to the DPU, which may uphold, amend, alter, or add to the selectmen's terms. If the company violates these terms, the selectmen may seek a restraining order in Superior Court or in the Supreme Judicial Court (MGL 164:91).

7.11.3 Underground Wires

Towns may choose to adopt a bylaw prohibiting new overhead wires and even requiring the phased-in burial of existing lines in any or all parts of town (MGL 166:22A-N). Because of the expense of such an undertaking, however, few towns have exercised this option. Under the law, it is the planning board that must initiate the procedure to adopt the bylaw.

7.12 UTILITY POLES

Companies who want to locate or relocate utility poles must apply for permission in writing to the selectmen, who must notify abutters and hold a public hearing (MGL 166:22). Unlike hearings for some transmission lines, however, utility pole hearings are usually routine affairs. As part of your decision, you may permit an increase in the number or height of wires and alteration of the poles, piers, or abutments.

Utility poles are generally erected by one utility and used by others, an arrangement that technically requires the approval of the selectmen. Under the law (MGL 166:22), you may authorize the attachment of the wires and fixtures of one utility to the poles and equipment of the other. In addition, you may grant joint or identical locations to be used in common by such companies and another owner.

7.13 WATER AND GAS MAINS

Selectmen may permit companies to lay pipes and conduits under streets for the conveyance of water, steam, hot water, or petroleum and petroleum byproducts (MGL 40:42, 43, 43A). Although the paramount authority to regulate and control the storage, transportation, and distribution of gas rests with the DPU (MGL 64:105A), gas companies must get the written consent of your board before digging up any street and must return the street to good repair afterward (MGL 164:70).

When water or gas companies are actively operating in a town, no other company or person may dig up the streets in order to lay mains or pipes without the consent, after a hearing, of the selectmen (MGL 164:86; MGL 165:8, 9). If a company is dissatisfied with the selectmen's ruling, however, it can appeal within 30 days to the DPU.

7.14 COMPLAINTS ABOUT PRICE OR SERVICE

Selectmen are specifically granted the right under state law to complain in writing to the DPU about the quality or price of electricity, gas, or telephone service (MGL 159:24; MGL 164:93). After a hearing, the DPU may order changes in the rates or the quality of service. Complaints about service may also be made by the attorney general and any twenty customers.

7.15 MUNICIPAL LIGHT AND GAS SYSTEMS

State law permits cities and towns to form their own municipal gas and electric companies (MGL 164:55), although no new towns have exercised that option in about seventy-five years. Today, forty cities and towns supply electricity to local customers, and four of these also supply gas. A few municipalities have their own power plants, but most purchase power from a regional distributor.

Of the forty communities, thirty-three are members of the Massachusetts Municipal Wholesale Electric Company (MMWEC), a nonprofit agency committed to supplying its members with the most reliable source of electricity at the lowest cost. In addition to generating its own power, MMWEC owns shares in power plants built by other utilities.

Municipally owned utilities are usually administered by an elected municipal light board or commission (MGL 164:55), or by the board of public works in towns that have voted to create one (MGL 41:69C-F). Alternatively, a town may vote to have its selectmen act as the municipal light board (MGL 41:21). Town charters may specify other arrangements as well. The day-to-day operations of the utility are handled by a manager of municipal lighting, who is appointed by the board (MGL 164:56).

Selectmen have little formal control over a municipally owned utility unless they also serve as the municipal light board. In that case, the lighting manager must furnish the selectmen at the beginning of each fiscal year with an estimate of income and expenses for the system (MGL 164:57). If so requested at any time, the selectmen and the manager must submit the books and accounts of the municipal lighting system to the DPU.

7.16 CABLE TELEVISION

Boards of selectmen are designated by law (MGL 166A) as the "issuing authority" for cable television licenses in towns. Cable television companies now operate in the majority of Massachusetts communities. These companies also have two other masters: the Federal Communications Commission (FCC) and the state Community Antenna Television Commission (also known as the Massachusetts Cable Television Commission). Your town has regulatory authority over cable TV operators only in those limited areas that have not been pre-empted by federal or state law.

7.16.1 Licensing Requirements

Under state law, no one can construct, commence construction, or operate a community antenna (cable) television system without a license from the selectmen, which is issued after a public hearing (MGL 166A:3-5). The strict application requirements are described in detail in the law, and your town may also require additional information from the applicant. Initial licenses may be granted for up to fifteen years and renewal licenses may be granted for up to ten years. The annual franchise fee collected by municipalities is set by state law, currently at fifty cents per subscriber.

Renewal of a cable license is an especially important time for a municipality. The renewal process is governed by federal law (47 U.S.Code 546) and usually begins two and a half to three years prior to license expiration. If your town is facing renewal in the next few years, you or your cable advisory committee should begin thorough preparations now.

Cable television licenses cannot be transferred or assigned without the written consent of the selectmen, although you cannot "arbitrarily or unreasonably" turn down such a request (MGL 166A:7). The law also details various reasons for which a license may be revoked, but only after a hearing (MGL 166A:11). State law permits towns to construct or purchase and operate a cable television system, but municipally owned systems are considered the same as privately owned systems and are subject to the same laws and regulations.

Licenses are contracts between your town and the cable company that describe the conditions under which the franchise may operate. Many of these conditions are subject to negotiation. An FCC ruling in late 1986 deregulated cable television rates, at least in communities where three or more off-air television channels are available without cable. While virtually no town has control over the rates charged by local cable operators, it can and should insist on high-quality service.

One of the most important areas of negotiation is customer service. Regulations issued by the Massachusetts Cable Television Commission strengthened consumer protection safeguards, requiring such things as full disclosure of rates and services, itemization, and simple language on bills. Your board, as local licensing authority, may set conditions on such things as the number of channels available, the area of service and line extension policy, and the availability of local production facilities to the community. Some towns have successfully negotiated, for example, for special access channels for schools, municipal government, and the general public.

7.16.2 Cable Advisory Committees

Massachusetts Cable Television Commission regulations permit selectmen to appoint a cable advisory committee to assist them. Because of the complexity of the field, most boards have taken advantage of this option. How the advisory committee's role and duties are defined is up to your board. In most towns, the advisory committee is responsible for assessing community needs, researching cable systems, analyzing license applicants, educating the public, monitoring service and taking complaints, and making recommendations to the selectmen on a range of issues related to cable. In a few towns, the advisory committee also resolves disputes between customers and the cable operator.

While members of your advisory committee may become experts in cable operations, it is the selectmen who retain the final licensing authority under state law. You cannot delegate your authority to grant, renew, and revoke cable TV licenses.

The Massachusetts Cable Television Commission has a municipal assistance coordinator and legal counsel who are available to answer questions from local officials. The National Association of Telecommunications Officers and Advisors (NATOA), part of the National League of Cities, may be able to help with more technical questions.

7.17 RAILROAD CROSSINGS

The route of a railroad through a town may be agreed upon by the selectmen and the railroad. If no agreement can be reached, however, the DPU must set the route (MGL 160:20, 21). The right to appeal the DPU decision to the Massachusetts Supreme Judicial Court is found in

MGL 25:5. The routes are already set in the commonwealth, and no major work has to be done. The siding of a railroad off the main line usually crosses private properties, and the railroad is required to demand the right of way. Settlements are usually direct between the railroad representatives and the property owner. In case of an impasse, the DPU settles the issue between the parties. The authority of the selectman is *pro forma*.

7.20 ELECTRONIC DATA PROCESSING

Towns' use of electronic means (i.e., computers) to process data and, in so doing, to help in the administration of town affairs, is ever-expanding. The management of computing has become increasingly complex, as new technologies continue to be introduced and become more widely diffused among municipal organizations.

Information underlies virtually everything that towns do. Your town creates as well as processes a mountain of data on any given day. The data can be spoken, written, or printed. The information must be processed and recorded, to be ultimately retrieved in a variety of formats (most usually, in a printed one). Your town will eventually turn to computer technology as an important tool that can improve not only the way you use and manage information but also the way you manage your town.

When information comes into your town hall, it must be converted into a format that can be input into a computer. The data on the computer must then be put into a format so that you can manage the flow of the information and use it. You must address the particulars of this process: what information should be collected; when, how and for whom it is collected; and how it is to be used. Another way to look at the process is sequentially:

1. Collect and record raw data.
2. Classify and categorize the data.
3. Perform all necessary mathematical functions.
4. Synthesize the data.
5. Summarize the results.
6. Store the information.
7. Retrieve the information.
8. Reproduce the information in a usable format according to managerial needs.
9. Distribute the information to relevant users.

Unstated in this description is the fact that your town's strategic information is derived from computer analyses that are continually updated. The quality, quantity, timeliness, and usefulness of the data generated, and the conclusions derived from them, depend upon the resources expended in collecting and interpreting the data.

7.21 HOW TO PURCHASE A NEW SYSTEM

In order to determine your town's electronic data processing needs, it is suggested that you undertake a needs survey, involving all potential users—departments as well as individuals. From this group you will be able to establish the nucleus of a Computer Advisory Committee (CAC). Next, solicit involvement from computer professionals residing in your town. Together, under your direction, they should establish goals and objectives of the proposed system (in relation to the previously detailed needs). The design of your town's system should be directly related to several items:

- The specific purpose of the entity collecting and using the information;
- Size of its operations;
- Availability of data;
- Type and format of data available;
- Costs of collecting and later retrieving the information;
- Frequency of the need for information;
- Availability of time, money, and personnel;
- Capabilities of the personnel; and
- Total cost of the system.

You now have the beginnings of a Request for Proposal (RFP) (see Section 4.70 on Contracts, Consultants, and Purchasing). You may want to consider engaging the services of a consultant to assist you in this process, or a member of the CAC may volunteer.

After you have determined the goals of the system, you should talk to the major computer companies serving towns similar to yours. Find out what equipment (hardware and software) neighboring towns use, and who installed and services it. It will be extremely useful to interview knowledgeable officials and personnel in these towns about their experiences with the equipment, the vendor, and the service company. Then, you are ready for the standard purchasing policies (see Section 4.75 on Purchasing).

Finally, make sure that your hardware and software can "talk to" the systems used by the state and other towns.

7.30 MISCELLANEOUS ADMINISTRATIVE DUTIES

In addition to all the other responsibilities, selectmen have a number of miscellaneous duties that do not fall neatly into any one category. For example, if there is any question about the date your town was settled for the purpose of celebrating a town anniversary, it is the selectmen who make that determination, subject to the approval of the voters (MGL 40:5(27)). In addition, the selectmen are charged with preparing the annual town report, conducting the census, and preparing the jury list.

7.31 ANNUAL REPORT

Before each annual town meeting, the selectmen must prepare and have printed at public expense an annual town report (MGL 40:49). The annual report must contain your board's report, the report of the school committee, statements and report of the town accountant, the town treasurer's report, and the report of any other officer or board you deem necessary. You may also include the jury list, although this is no longer required by law (MGL 234:9). Reports are for the previous calendar year, except the treasurer's and accountant's reports, which are for the current fiscal year.

Towns may, by bylaw, provide for the printing of the annual report within ninety days after the close of the fiscal year. The town clerk must send a copy of the annual report to the state library (MGL 40:50).

7.32 CENSUS

Your board is required to have a census of the town conducted on January 1 of every year that ends in 5. Selectmen must appoint a municipal census supervisor, who may be the town clerk or some other town employee to conduct the census under the direction of the secretary of state. The selectmen may also use the services of the registrars of voters, the police, or any other municipal department under the selectmen's control.

Census forms reporting the number of voters in each precinct must be completed and returned to the secretary of state under oath by the selectmen on or before November 1 of the census year. If new precincts are established in the town between January 1 and October 15 of a census year, the selectmen must submit a revised census report to the secretary of state. The secretary of state may require the selectmen to correct any errors in the town census.

At this writing, a constitutional amendment is pending before the legislature to abolish the state taking its own census every five years. If approved, towns would use their street lists as a "census" and rely on the decennial federal census for details.

7.33 JURORS

A state law adopted in 1982 (MGL 234A) changed the way jurors are selected in Massachusetts. The law, and the rules and regulations adopted by the Supreme Judicial Court and the state jury commissioner, impose certain duties on towns to determine those who are eligible for jury service. These duties are fulfilled by the selectmen (or town manager or other executive head of the town) and by the town clerk. A town that has a board of election commissioners or board of registrars of voters may, by letter to the jury commissioner signed by the executive head of the town, delegate certain responsibilities to those boards. However, ultimate responsibility for compliance with the law and regulations remains with the selectmen or other head of the town (MGL 234A:9).

On or before June 1 each year, each town must make a sequentially numbered list of the names, addresses, and dates of birth of everyone who was at least seventeen years old and who lived in the town as of January 1. The names of residents must be listed and numbered, without duplication and in alphabetical order, one name to each number, along with any other information specified in the jury commissioner's regulations. On or before June 1, every town must submit one copy of the list to the office of the jury commissioner and make a copy available for inspection by the public. The cost of preparing the "numbered resident list" is paid by the town (MGL 234A:10).

By June 1, each town with 20,000 or more residents on its list must submit an automated copy of the list to the office of the jury commissioner. With smaller towns, this is optional (MGL 234A:11).

By July 1, the office of the jury commissioner must determine the number of prospective jurors to be drawn from each town. This number must be, as nearly as possible, equal to the ratio of the population of the town to the entire population of the judicial district, multiplied by the total number of prospective jurors (MGL 234A:12). Towns that have not submitted a numbered jury list by August 1 must submit a typewritten list of prospective jurors who have been randomly selected according to law.

On or before September 1, the office of the jury commissioner must prepare the prospective jury list for each town. The list contains the names, addresses, dates of birth, and related information for all randomly selected prospective jurors from the town. Two copies must be mailed to the town by October 1 (MGL 234A:16).

WORKING WITH OTHER LEVELS OF GOVERNMENT

What's going on outside your town's borders may be as important to your success in governing as what is happening within them. Your community does not exist in a vacuum; its government is only one member of a family of governments constantly interacting at the regional, state, and federal levels.

As a selectman, you need to be aware of state and federal initiatives that could affect your community and to make an effort to influence the direction they take. You need to keep tabs on what your county is doing and how much your town is paying for it. And, you should be familiar with problems that cross town borders and consider seeking regional solutions to them.

8.10 COOPERATING WITH OTHER TOWNS

Cooperating with one or more towns on projects and splitting the cost can be an efficient way to provide services that your town alone could not afford. There are numerous examples in Massachusetts of successful cooperative arrangements, ranging from the formation of veterans' services districts to the hiring of a single building inspector to serve several towns. Communities have also experimented with sharing public works equipment, data processing services, and ambulance coverage. In addition, some towns now cooperate for planning purposes, for example, developing joint conservation or economic development plans.

Most cooperative arrangements fall into one of the following four categories:

1. *Fee-for-service arrangements.* One municipality contracts with others to provide a needed service. For example, a town may offer use of its lock-up to neighboring towns for a fee.

2. *Service districts and shared employees.* Several municipalities contribute to the cost of providing a service for all. For example, several towns form a health district and share the salary of a health agent.

3. *Contracts with regional entities.* Municipalities cooperate through an existing entity, such as the county or regional planning agency. For example, a county offers communities the opportunity to join in collective purchasing.

4. *Contracts with private vendors.* Several municipalities contract with a private agency to provide a service. An example is a group of towns that hires a private resource recovery operation to provide trash disposal.

Some of these joint arrangements can be accomplished by simple agreement between boards of selectmen, while others require town meeting action or even legislative approval. Towns interested in cooperative arrangements should check with both their town counsel and the state Executive Office of Communities and Development, which has been active in promoting interlocal cooperation through its Incentive Aid Program.

8.20 REGIONAL ENTITIES

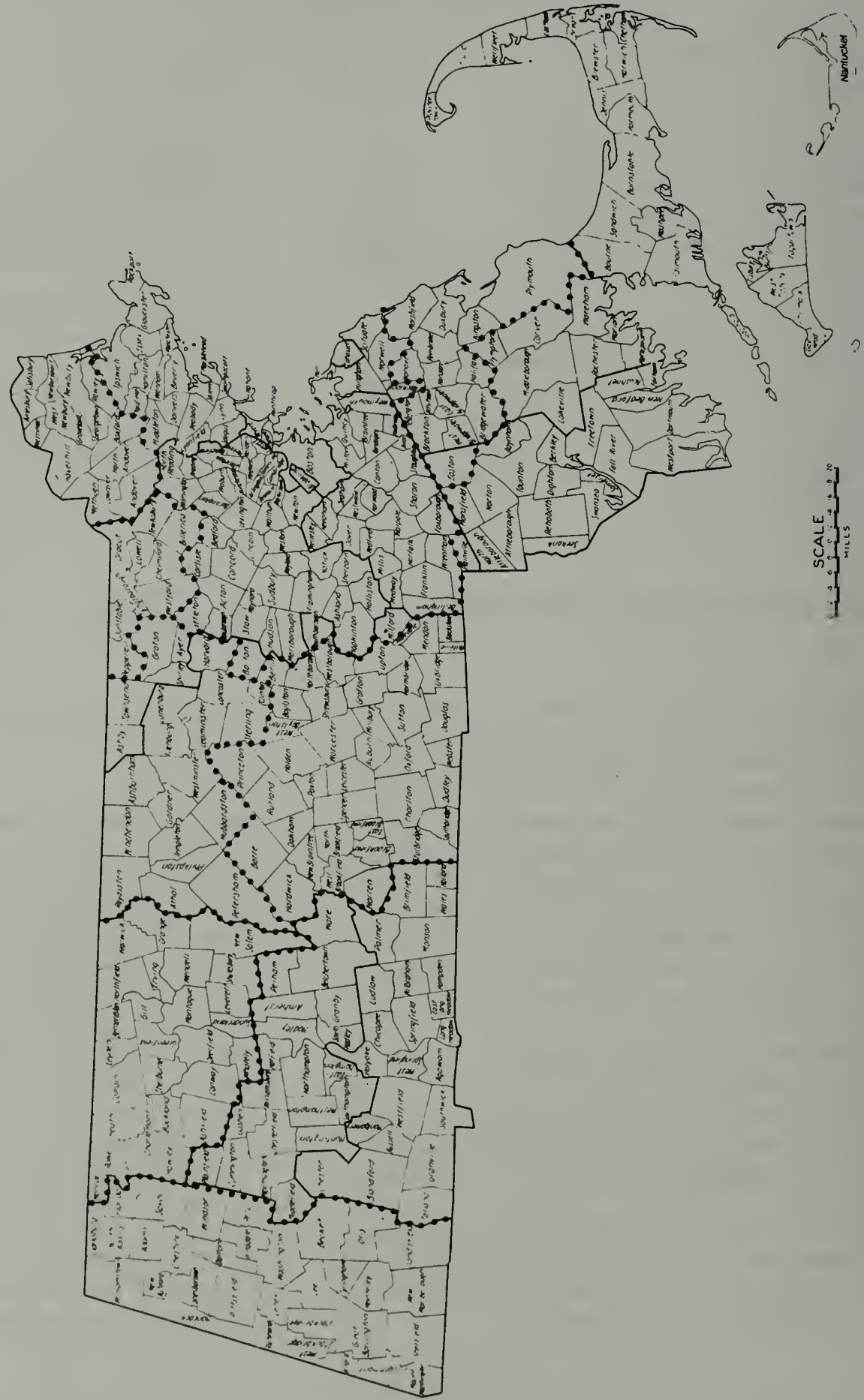
Over the years the number of fairly permanent, regional entities (known variously as districts, commissions, authorities, and councils) have grown in Massachusetts, some created by federal or state fiat and some formed under state authority by cities and towns. In eastern Massachusetts, the Metropolitan District Commission is perhaps the best known regional district, maintaining parks and highways, and providing police patrols in forty-three communities in the greater Boston area. The state is also divided into thirteen regional planning agencies (RPAs), which compile data, conduct research, and prepare comprehensive plans for the area's physical, social, and economic development (see Exhibit 8.1).

In most cases, these districts are financed by assessments on participating communities. Towns are required to include in their tax levy funds to support any regional district they belong to.

Regional districts often perform functions that in other states would be handled by counties. Among the types of

Exhibit 8.1
Regional Planning Agencies

Source: Used with permission from *Your Massachusetts Government* by Donald Levitan, published by Government Research Publications © 1984.



regional districts that have been formed in Massachusetts are regional school districts, conservation districts, electric power districts, housing authorities, water pollution control districts, reclamation districts, and sewer and sanitary districts.

8.30 COUNTY GOVERNMENT

Traditionally, counties have been the stepchildren of Massachusetts government, exercising only those limited functions authorized by the legislature. A bill passed in 1985 gave counties the option of forming charter study commissions to reassess their roles. Nine counties (Barnstable, Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex, Plymouth, and Worcester) have voted to take advantage of that option. Under the bill, study commissions may recommend no change in county government; creation of a county manager, county executive, or board-chairman form of county government; adoption of a special charter; or elimination of county government. Recommendations made by the various charter study commissions could determine how important counties will be in the future of the commonwealth.

The exact functions carried out by county government vary from county to county. Several counties operate hospitals and three—Middlesex, Essex, and Hampden—run houses of correction. Each county has one or more registries of deeds. Until 1978, counties were also responsible for the operation of the district court system. However, the Court Reorganization Act transferred most of those responsibilities to the state, leaving counties with possession of the courthouses and court-related property. Counties are charged with maintaining the property, but receive substantial “rents” from the state for their use. Counties also have a variety of other miscellaneous powers.

8.31 COUNTY ADVISORY BOARDS

The difference between what counties spend and what they receive from the state and from income-generating activities is paid for by cities and towns, which are assessed a county tax each year in proportion to their property valuation. Since 1982, communities in every county except Nantucket and Suffolk have had a direct say in the size of county budgets through county advisory boards, which are made up of officials from each of the cities and towns in the county. In towns, the county advisory board representative must be a member of the board of selectmen (MGL 35:28B).

Although county commissioners actually prepare the county budget, county advisory boards have complete authority to increase, decrease, or revise any operating, capital, or supplementary budget of the county. Before it finally adopts the budget, the advisory board must hold at least one public hearing, and the budget must be adopted on or before February 1 each fiscal year. Each city or town has a weighted vote in this process in proportion to its property value.

Exhibit 8.2

Why Bills Don't Pass

“I don't understand why the bill didn't pass. It was such a good idea.”

While your legislators can often be helpful, you must be realistic about what they can do for you. A legislator is responsible for his vote and it is reasonable for you to hold him accountable for it. However, there are 160 House members and 40 senators in Massachusetts, so no one legislator can control a bill or an issue. When a bill fails to pass, it is usually because individuals or groups are opposing it or because no one is offering it consistent and diligent support. Whatever the bill, the likelihood is that it will have opponents.

Everyone thinks local aid is a good idea, but local aid involves sending state money to local government and there are thousands of claims for state programs and projects that compete with local aid for a share of the state's dollars. Bills that appear to have slipped through the legislature with no objection are bills that someone has spent a good deal of time preparing the way for. Bills that die in committee have powerful enemies or not enough close friends. The best way to influence the fate of legislation is to create a good working relationship with your representative and senator and to work closely with the MMA.

8.40 DEALING WITH THE COMMONWEALTH

It may surprise you to learn that in some quarters selectmen are known as “opinion leaders,” especially since you know how difficult it is to get the finance committee or town meeting to see things your way. From the perspective of legislators, the governors, and other state officials, however, it is selectmen who have the best knowledge of their towns and of how changes in regulations and in legislation will affect local government, local services, and, ultimately, local taxpayers and residents.

When new programs or proposals affecting town government are under consideration on Beacon Hill, state officials are usually receptive to comments, criticisms, amendments, and explanations from the local level. The problem is that state officials and politicians rarely go looking for comments. And if they don't hear from you, they assume that all is well and that no unforeseen consequences will result from the adoption of whatever program they are about to impose.

8.41 ESTABLISHING TIES AT HOME

It is a good idea to invite your senator and representative to a meeting of the board of selectmen when legislation affecting your town is under discussion and an even better idea to meet regularly with legislators, either individually or as a group, to discuss a whole range of issues. The best forum for discussing joint concerns and issues is one that is low-key, friendly, and cooperative. Regular meetings offer an opportunity to exchange views, suggest legislation, propose amendments, or urge support for a pending bill. You can give legislators a sense of how your budget will be affected by a state initiative. In addition, these meetings allow you to thank your legislators publicly for their efforts on behalf of the community. This is very important: legislators often complain that they only hear from local officials when something goes wrong.

Try to invite your legislators to selectmen's meetings three or four times during the legislative session, which begins in the first week of January and can run until the end of December. But remember that legislators lead lives even more harried than yours. It is important to be flexible. Legislative sessions often run late and you may have to reschedule your meeting once or twice. When your legislators do appear for a meeting, try not to keep them waiting. These efforts will be worthwhile if you can establish a good working relationship with the people who represent your interests at the State House and can intercede for you with state agencies.

8.42 ESTABLISHING TIES STATEWIDE

As a selectman, you do not stand alone. Many of your concerns as a local official are shared by your counterparts in other communities. You can have an even stronger role in influencing the legislature, state agencies, and the governor if you take advantage of opportunities for joint action. Selectmen in some communities like to meet periodically in joint session with neighboring selectmen and legislators. This can be very valuable, as long as there is an agreed-upon agenda so that the session is run in an orderly manner.

Another useful vehicle for cooperative action are county selectmen's associations. County associations have different meeting schedules, but most meet at least a couple of times a year to review common problems, exchange information, and take unified stands on issues. You can learn a great deal from your colleagues in other towns as well as increase your clout by working together on issues of mutual concern.

8.43 RELYING ON THE MASSACHUSETTS MUNICIPAL ASSOCIATION

The Massachusetts Municipal Association (MMA) can ease your way in influencing the paths of state government. Created by the cities and towns of the commonwealth, the MMA speaks loudly and clearly for local government before the governor, the legislature, and the multitude of state agencies. In 1988, 350 of the 351 communities in Massachusetts were members. This nonprofit, nonpartisan, service organization is composed of five statewide groups (in addition to the Massachusetts Selectmen's Association, there are statewide organizations of mayors, managers, finance committee members, and aldermen or councillors). The MMA takes vigorous positions on pending legislation that will affect towns and cities, and encourages the filing of bills that will benefit them.

Another strong influence on state affairs in the Local Government Advisory Committee (LGAC), composed primarily of local officials who make up the MMA Board of Directors. The governor and the LGAC meet monthly to discuss mutual problems and to develop ways of dealing with them. The LGAC's direct contacts with the governor and other high state officials ensure that all levels of state government remain sensitive to local concerns.

Other activities of the MMA are the professional management assistance provided by the MMA Consulting Group, various research projects, a newsletter and a magazine, information and referrals from the MMA's thirty-member staff, the Massachusetts Interlocal Insurance Association (see Section 4.86.4), Annual Meeting, and workshops held throughout the year.

8.44 INFLUENCING LEGISLATION

When the state legislature considers bills that affect your town, you need to make certain that your legislators understand your needs, your concerns, and the probable effects of the bills under consideration. You can become involved not only in individual community action, but also in joint action with your county selectmen's association and with your statewide association, the Massachusetts Municipal Association. (See Exhibit 8.2.)

While towns are prohibited from appropriating funds for the purpose of influencing a statewide referendum, they are free to use public funds to influence the legislative process. State law (MGL 40:5) specifically allows local funds to be appropriated to hire counsel to appear before a legislative committee. Another state law (MGL 3:50) exempts municipal employees and agents who are acting on their behalf from the laws that regulate lobbyists on Beacon Hill.

The MMA attempts to screen the 6,000 to 8,000 bills that are filed each year to see which ones will affect local government and whether the impact will be beneficial or detrimental. In addition, the MMA makes the case each

year for local aid, for state grant programs, and for additional funding in such areas as Chapter 90 road construction funds. Bills of importance to local government are summarized each month in the newsletter, *The Beacon*, which also periodically asks you to call your legislators about specific legislation that could be particularly damaging to cities and towns.

Calling your legislator on bills that you believe would affect your town is one of the most valuable things you can do to promote sensitivity to local concerns in your representative or senator. Any legislator will tell you that six calls on a single bill is unusual and a dozen calls on a single issue are a deluge. The fact that you took the time to call about a particular issue is often enough to get your legislator to reconsider.

Some selectmen believe they cannot affect legislative issues because they don't have the time or the ability to come to the State House. This is untrue. Whatever else your legislators do, they have to go home, and that is where you can exert the most influence—both in the local newspapers and with the local electorate. In addition, a simple letter or phone call—to your legislator, to the governor, or to the MMA—can be an effective way to register your concerns. (For further information, see Appendix A on How to Write to Federal and State Officials.)

8.45 DEALING WITH STATE AGENCIES

Important as it is to help shape legislation before it is passed, your efforts should not end with the enactment of a bill. The second stage in the life of a piece of legislation is its implementation. It is at this crucial stage that your expertise is often needed most.

Many laws affecting local government give considerable discretion to the state agency charged with administering them. Agencies are often required to set regulations or develop standards under the law. At a minimum, agencies must come up with internal policies for implementing new initiatives. Decisions made by state officials after a law is passed often can become a bigger headache for local officials than the law itself.

In some cases, state (and federal) agencies are required by law to hold hearings prior to issuing regulations. These hearings provide an opportunity for you to comment on the record, either in person or in writing, about potential problems you see in the implementation of legislation. By all means, take advantage of these opportunities. State agencies are not always very responsive to individual comments, however, and you may have more success by relying on the MMA to negotiate on your behalf. In the past, the MMA has been successful in persuading state agencies to streamline procedures or reimburse towns for certain implementation costs. To be sure that your interests are represented properly, however, you need to inform the MMA soon when you see problems developing in the implementation of legislation.

8.45.1 State-Mandated Programs

Since the passage of Proposition 2½ in 1980, the state has been prohibited from passing any new laws, regulations, or tax exemptions that impose significant costs on municipalities without providing the funds to carry out them out (MGL 29:27C). This provision is enforced by the Division of Local Mandates (DLM) of the state auditor's office, which is responsible for determining "in a timely manner" the estimated and actual financial effects on each city and town of laws, rules, and regulations of state agencies.

The state auditor has the responsibility to determine whether the state has imposed a mandated cost upon a municipality and, if so, the amount of the mandated expense. Any executive officer of any municipality may request in writing that DLM determine whether an existing or proposed statute, rule, or regulation is a new state mandate. Upon petition, DLM will study the legislative origins of the law and assess its financial impact upon the municipality. Once a mandate determination is made, DLM's cost estimates are deemed to be "prima facie" evidence in a court of law. Key components of a mandate determination are:

1. Is the effective date of law, rule, or regulation on or after January 1, 1981?
2. Does the law, rule, or regulation contain provisions for local option, voluntary compliance, or contractual arrangements (grants)?
3. Has there been local acceptance by vote of city council or town meeting?
4. Is there direct service or cost obligation?
5. Are the local costs imposed independent of a court decision?
6. Is the state funding provided in the same legislative session by general law and by appropriation and continued in successive years?

DLM must make public its determination within sixty days after receiving the request, including the amount owed by the state, if any.

A provision added to the law in 1984 requires the division to review periodically all laws and administrative regulations that have a significant financial impact on cities and towns. Under the "Sunset Review Program," DLM is to identify the financial impact of all state-mandated programs, review the soundness of the funding mechanism, and determine whether the program is serving its original intent. DLM must make annual recommendations to the legislature about which programs should be continued, modified or eliminated.

The *Catalogue of State Programs Affecting Cities and Towns*, available from DLM, lists 1,700 state laws and regulations put into effect between 1966 and 1984 that impose costs on local governments. DLM is seeking the help of local officials in determining which state-mandated programs meet the needs of cities and towns and which should be dropped or amended. In addition, the division

may be helpful in providing information about the services and activities of state agencies and in providing technical assistance in implementing new state laws and regulations. The division tracks legislation that affects cities and towns and publishes a newsletter, *DLM Report*, to update local officials on DLM and state activities.

8.45.2 Getting Help from the State

Another source of assistance on the state level is the Division of Municipal Development. Part of the Executive Office of Communities and Development (EOCD), this division provides technical help to cities and towns in a wide range of areas and administers a number of grant programs (see also Section 6.40 on Housing and Development). It also serves as the clearinghouse for state review of all applications for federal aid developed by cities, towns, or state agencies. In addition, the division serves as advocate for cities and towns within state government.

Among its chief aims are promoting revitalization of downtown commercial districts and encouraging modern management techniques in cities and towns. Incentive Aid, a management improvement program, for example, provides grants to cities, towns, and school districts for locally designed projects. The Circuit Rider Program provides small towns who want to share professional staff with start-up money. In addition, staff members are available to provide information in such areas as charter reform, land use planning, and economic development.

Like state legislators, federal lawmakers often lament that local officials only contact them to complain or when they want something. It makes sense to establish a good relationship with your representative and U.S. senators before you need their help. Familiarize yourself with their committee assignments and let them know you notice their votes by occasionally dropping them a note or making a phone call. Keep them informed of major issues in your community by calling or meeting regularly with a member of their home district staff. Invite them to attend ribbon-cutting ceremonies or inspection tours of projects that involve federal dollars.

Representatives and senators, of course, lead hectic lives. Don't drop in unannounced in Washington and expect to get a half-hour meeting. On the other hand, don't hesitate to make an appointment with him or her—in Washington or at home—if you have a pressing issue to discuss. If you are going to Washington, you will find it helpful to contact beforehand the legislator's Massachusetts office and the MMA to make arrangements for the visit. If you are asking for help in getting a project approved or legislation passed, your best ammunition is a brief, well-documented statement that describes the specific effect the project or bill would have on your town and his or her district.

Finally, there are several organizations in Washington that represent the interests of local government on Capitol Hill. (See Appendix C).

8.50 EXERTING YOUR INFLUENCE ON THE FEDERAL LEVEL

If you are surprised to learn that your state legislator often wants to know what you think, you'll be astonished to find out that your representative in the U.S. Congress also values your opinion on issues that affect towns in his or her district. The key here is to be prepared, be specific, and pick your issues carefully. Your senator or representative is much more likely to go to bat for you if there is a reasonable chance that the results of his or her efforts will be positive. If you are seeking help in securing a grant for wastewater treatment, for example, make sure your town has completed all the necessary paperwork first. If you are asking for support on a bill, try to research the legislation first to see if it has any hope of passage. (See Appendix A on How to Write to Federal and State Officials.)

APPENDIX A

ADDRESSES FOR FEDERAL AND STATE OFFICIALS

Writing to state and federal officials can promote the interests of your town—when your letter is effective. The rules are simple:

- Get to the point quickly. What interests you? If you are writing about pending legislation, give the full name of the bill and, if you know it, its number. Be specific about the effects the bill will have on your community. State explicitly whether you oppose or favor the bill.
- Tell the official what you want him or her to do: vote for or against the bill, kill it, propose an amendment, put pressure on a committee chairperson.
- Be businesslike and polite. Do not be abusive or long winded.
- Praise the legislator if you approve of an action he or she has taken recently.
- Request an answer.

In addition to writing to the legislators of your district, you can make a difference by writing to the legislative leadership.

President

The President
The White House
1600 Pennsylvania Avenue
Washington, DC 20500

Dear Mr. President/ Respectfully yours

U.S. Senator

Honorable (full name)
United States Senate
Washington, DC 20515

Dear Senator (surname)/ Sincerely yours

U.S. Representative

Honorable (full name)
U.S. House of Representatives
Washington, DC 20515

Dear Mr./ Ms. (surname)/ Sincerely yours

Governor

Honorable (full name)
Governor of Massachusetts
State House, Room 360
Boston, MA 02133

Dear Governor (surname)/ Sincerely yours

Attorney General (or other constitutional officer)

Honorable (full name)
Attorney General (or other title)
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Dear Mr./ Ms. Attorney General (or other title)/
Sincerely yours

State Senator

Honorable (full name)
State House
Boston, MA 02133

Dear Senator (surname)/ Sincerely yours

State Representative

Honorable (full name)
State House
Boston, MA 02133

Dear Representative (surname)/ Sincerely yours

APPENDIX B

SOURCES AND RESOURCES IN THE FEDERAL AND STATE GOVERNMENT

The following listing is limited to the more relevant and useful sources of information and assistance to towns in Massachusetts.

B.1 GENERAL INFORMATION NUMBERS

Federal Information
617-223-7121

State Information
617-727-2121

Citizen Information Service
Commonwealth of Massachusetts Secretary of State
617-727-7030
800-392-6090

Governor's Office
State House, Room 360
Boston, MA 02133
617-727-3600

Governor's Office of Community Services
State House, Room 159
Boston, MA 02133
617-727-6250
800-632-8176

Federal Government Bookstore
John F. Kennedy Building, Room G-25
Boston, MA 02203
617-223-6071

State Bookstore
Office of the Secretary of State
State House, Room 116
Boston, MA 02133
617-727-2834

State Library
State House, Room 341
Boston, MA 02133
617-727-2590

Federal Census Information
617-223-0226

State Census Information
617-727-9301

Lottery Number Information
617-227-0200

Consumer Information Office
Executive Office of Consumer Affairs and Business
Regulation
One Ashburton Place, 14th Floor
Boston, MA 02108
617-727-7780

B.2 STATE AGENCIES

Board of Conciliation and Arbitration
100 Cambridge Street, 11th Floor
Boston, MA 02202
617-727-3466

Community Development Finance Corporation (CDFC)
131 State Street, Suite 600
Boston, MA 02109
617-742-0366

**Community Economic Development Assistance
Corporation (CEDAC)**
8 Winter Street, Suite 800
Boston, MA 02108
617-727-0506

Department of Commerce and Development
100 Cambridge Street, 13th Floor
Boston, MA 02202
617-727-3221

Division of Economic Development
617-727-3206

Division of Tourism
617-727-3201

**Site Inventory Tracking Exchange (S.I.T.E.)
Program**
617-727-3215

Department of Labor and Industries

100 Cambridge Street
Boston, MA 02202

Division of Industrial Safety

100 Cambridge Street, 11th Floor
Boston, MA 02202
617-727-3460

Division of Occupation Hygiene

1001 Watertown Street
West Newton, MA 02165
617-727-3982

Department of Public Health

150 Tremont Street, 10th Floor
Boston, MA 02111
617-727-2700

Bureau of Community Health Services

Dental Health Program
617-727-3150

Bureau of Community Health Services

Division of Drug Rehabilitation
617-727-8614

Bureau of Environmental Health Services

Division of Community Sanitation
617-727-2660

Bureau of Health Care Systems

Office of Emergency Medical Services (OEMS)
617-451-3433

Office of Local and Regional Health Operations

617-727-8714

Regional Offices

Southeastern

Lakeville Hospital
Route 105
Lakeville, MA 02347
508-947-1231

Western

Western Massachusetts Public Health Center
University of Massachusetts
Amherst, MA 01003
413-545-2563

Western Subunit

246 North Street
Pittsfield, MA 01201
413-443-4475

Northeastern

Tewksbury Hospital
East Street
Tewksbury, MA 01876
508-851-7261

Central

Rutland Heights Hospital
Maple Avenue
Rutland, MA 01543
508-886-4711

Massachusetts Housing Finance Agency (MHFA)

50 Milk Street
Boston, MA 02109
617-451-3480

Massachusetts Industrial Finance Agency (MIFA)

400 Atlantic Avenue
Boston, MA 02210
617-451-2477
800-MIFACTS

Office of the Attorney General

One Ashburton Place
Boston, MA 02108

Eminent Domain Division

617-727-2225

Government Bureau

617-727-1020

Office of the Inspector General

One Ashburton Place, 13th Floor
Boston, MA 02108
617-727-9140
800-322-1323

Office of Training and Employment Policy

Executive Office of Economic Affairs
Charles F. Hurley Building, 4th Floor
Government Center
Boston, MA 02114
617-727-2252

Rate Setting Commission

2 Boylston Street
Boston, MA 02116
617-727-1150

Secretary of State

State House, Room 340
Boston, MA 02133
617-727-2800

Census Division

100 Nashua Street
Boston, MA 02114
617-727-9301

Elections Division

One Ashburton Place, 17th Floor
Boston, MA 02108
800-462-VOTE

Massachusetts Historical Commission

80 Boylston Street
Boston, MA 02116
617-727-8470

Western Regional Office

Secretary of State West
21 Elm Street
Springfield, MA 01103
413-733-7876

State Agency for Surplus Property
One Ashburton Place, Room 1010
Boston, MA 02108
617-727-5774

State Ethics Commission
One Ashburton Place, 14th Floor
Boston, MA 02108
617-727-0060

State Labor Relations Commission
100 Cambridge Street, 16th Floor
Boston, MA 02202
617-727-3505

Water Resources Authority
100 First Avenue
Charlestown Navy Yard
Boston, MA 02129
617-242-6000

Workers' Compensation
Division of Industrial Accidents
100 Cambridge Street, 16th Floor
Boston, MA 02202
617-727-3407

B.3 STATEWIDE MUNICIPAL ASSOCIATIONS AND RESEARCH CENTERS

Association of Town Finance Committees
Stuart DeBard, Executive Secretary
c/o Weston, Patrick, Willard & Redding
84 State Street
Boston, MA 02109
617-742-9310

City Solicitors and Town Counsel Association of Massachusetts
James B. Lampke, Secretary/Treasurer
115 North Street, Suite 3
Hingham, MA 02043
617-749-9922

Environmental Lobby of Massachusetts
3 Joy Street
Boston, MA 02108
617-742-2553

Fire Chiefs Association of Massachusetts
Chief Raymond L. Sorensen, Secretary/Treasurer
P.O. Box 381
Stoneham, MA 02180
617-438-7510

Institute for Governmental Services
University of Massachusetts
Middlesex House
Amherst, MA 01003
413-545-0001

Massachusetts Board of Library Commissioners
648 Beacon Street
Boston, MA 02215
617-267-9400
800-952-7403

Massachusetts Building Commissioners and Inspectors Association
Joseph Cellucci, President
Building Department
795 Massachusetts Avenue
Cambridge, MA 02139
617-498-9015

Massachusetts CAP Directors Association
Kathleen McDermott
Montachusets Opp. Council
66 Day Street
Fitchburg, MA 01420

Massachusetts Chapter National Association of Housing and Redevelopment Officials (NAHRO)
Thomas J. Connelly, Jr., Executive Secretary
11 Beacon Street, Suite 722
Boston, MA 02108
617-367-0008

Massachusetts Chiefs of Police Association
130 Bowdoin Street
Boston, MA 02108
617-723-5002

Massachusetts City Clerks' Association
John P. Campbell
c/o City Hall
Boston, MA 02201
617-725-4600

Massachusetts Collectors and Treasurers Association
Aldo F. Luca, Executive Secretary
P.O. Box 954
Groton, MA 01450
508-448-6626

Massachusetts Contributory Retirement Systems
John E. Murphy, Jr., Executive Secretary
Box 631, Union Square Post Office
Somerville, MA 02143
617-628-6570

Massachusetts Federation of Planning Boards
Madelyn A. McKie, Executive Director
187 Mill Street
Haverhill, MA 01830
508-372-2159

Massachusetts Government Finance Officers Association
Marian Hewson
Town Hall
Holden, MA 01520
508-829-6561

Lincoln Institute of Land Policy

1000 Massachusetts Avenue
Cambridge, MA 02138
617-661-1152

Local Officials Human Services Council

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Massachusetts Association of Assessing Officers

Marion Fantucchio, Secretary/Treasurer
243 Water Street
Quincy, MA 02169
617-773-1380

Massachusetts Association of Conservation Commissions

Lincoln Filene Center
Tufts University
Medford, MA 02155
617-381-3457

Massachusetts Association of Health Boards

Barbara A. Kern, Executive Director
111 Atlantic Avenue
Cohasset, MA 02025
617-383-0693

Massachusetts Association of Labor Service Directors

Ronald G. Guest, President
Personnel Department
City Hall
Marlborough, MA 01752
508-460-3700, ext. 3705

Massachusetts Association of Planning Directors

Jeffrey M. Luxemberg, Chairperson
City Planner
City Hall
Melrose, MA 02176
617-665-5490

Massachusetts Association of Public Purchasing Officials

Blair Kanbar, President
Purchasing Agent, City Hall
Newton, MA 02154
617-552-7003

Massachusetts Association of School Business Officials (MASBO)

c/o John F. Conway, Secretary/Treasurer
149 Franklin Street
Stonham, MA 02180

Massachusetts Association of School Committees

Paul H. Goren, Executive Director
179 South Street, 2nd Floor
Boston, MA 02111
617-542-3225

Massachusetts Association of School Superintendents

Peter R. Flynn, Executive Director
18 Tremont Street
Boston, MA 02108
617-523-4263

Massachusetts Highway Association

Harry P. Loftus, Secretary
P.O. Box 98
Marlborough, MA 01752
508-485-1973

Massachusetts Library Association

Paula Bozoian, Executive Secretary
P.O. Box 556
Wakefield, MA 01880
617-438-0779

Massachusetts Mayors' Association

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Massachusetts Moderators' Association

c/o Massachusetts Municipal Association
60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Massachusetts Municipal Association

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272
800-882-1498

Massachusetts Municipal Auditors' and Accountants' Association

Margaret A. Jacobsen
Town Hall
Auburn, MA 01501
508-832-7707

Massachusetts Municipal Councillors' Association

60 Temple Place
Boston, MA 02111
617-426-7272

Massachusetts Municipal Data Processing Association

Robert Brennan
1305 Hancock Street
Quincy, MA 02169
617-773-1380

Massachusetts Municipal Management Association

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Massachusetts Municipal Personnel Association

Michael Rourke
Natick Town Hall
13 E. Central Street
Natick, MA 01760

Massachusetts Municipal Wholesale Electric Company

Stony Brook Energy Center
P.O. Box 426
Ludlow, MA 01056
413-589-0141

Massachusetts Public Health Association

Lynne Karsten, Executive Director
305 South Street
Jamaica Plain, MA 02130
617-524-6696

Massachusetts Recreation and Park Association

Nancy White
P.O. Box 5135
Cochituate, MA 01778
617-455-7521

Massachusetts Secondary School Administrators' Association

Richard F. Neal
83 Cedar Street
Milford, MA 01757
508-478-5641

Massachusetts Society of Conservation Professionals

Lincoln Filene Center
Tufts University
Medford, MA 02155
617-381-3457

Massachusetts Selectmen's Association

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Massachusetts Town Clerks' Association

Shirley Austin, Secretary
Office of the Town Clerk
Town Hall
Holbrook, MA 02343
508-767-4314

Massachusetts Water Works Association

c/o Richard C. Drake
Camp Dresser & McKee, Inc.
One Center Plaza
Boston, MA 02108
617-742-0459

Municipal Electric Association of Massachusetts

Richard L. Bailey, Secretary/Treasurer
80 Commercial Street
Marblehead, MA 01945
617-631-0240

Pension Reserves Investment Management Board (PRIM)

200 State Street
Boston, MA 02109
617-439-4600

B.4 PUBLICATIONS

Institute for Governmental Services

Publications Office
University of Massachusetts
221 Middlesex House
Amherst, MA 01003

Assessment Administration Manual for

Massachusetts Assessors

A Guide to the Mass. Public Employee Collective Bargaining Law, 5th Edition

A Handbook for Citizen Boards and Councils

A Manual for Town Clerks in the Commonwealth of Mass., Vol. I

A Mass. Career Education Guide to Strategies, Activities & Resources

Conducting a Public Meeting

The Microcomputer Letter: Information for Managers

Town Clerk's Manual, Vol. II

International City Management Association

1120 G Street, N.W.
Washington, DC 20005

PM: The Monthly Magazine of the International City Management Association

The Management of Local Planning, David C. Slater, 1984, 288 pp.

The Effective Local Government Manager, Wayne F. Anderson, et al., 1983, 264 pp.

Small Cities and Counties: A Guide to Managing Services, James M. Barrovetz, editor, 1984, 356 pp.

National League of Cities

1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
202-626-3000

Tools for Leadership: A Handbook for Elected Officials, Harvey L. Sweetwood, 32 pp.

The Nation's Cities Weekly

State Auditor's Office

Division of Local Mandates
100 Boylston Street, Room 933
Boston, MA 02116
617-727-0980
800-462-2678

Catalogue of State Programs Affecting Cities and Towns, 1986

Massachusetts Municipal Association

60 Temple Place, 2nd Floor
Boston, MA 02111
617-426-7272

Municipal Advocate (formerly *The Municipal Forum*)

The Beacon

Managing Small Towns, Brent Wilkes, editor, 1986

Handbook for Massachusetts Selectmen,

Jane Seagrave, editor,

Donald Levitan, associate editor, 1988

APPENDIX C

NATIONAL PROFESSIONAL ORGANIZATIONS OF INTEREST TO LOCAL GOVERNMENTS

The following lists the more significant organizations that provide services to local government. Most are membership groups who are elected as well as appointed. For specific information on the services and publications available, you are urged to contact the specific organization.

Academy for State and Local Government
444 N. Capital Street, N.W., Rm. 349
Washington, DC 20001
202-638-1445

Airport Operators Council International
1220 19th Street, N.W.
Washington, DC 20036
202-293-8500

American Association of Airport Executives
4224 King Street
Alexandria, VA 22302
703-824-0500

American Association of Port Authorities
1010 Duke Street
Alexandria, VA 22314
703-684-5700

American Association of School Administrators
1801 N. Moore Street
Arlington, VA 22209
703-528-0700

American College of Healthcare Executives
840 N. Lake Shore Drive
Chicago, IL 60611
312-943-0544

American Institute of Architects
1735 New York Avenue, N.W.
Washington, DC 20006
202-626-7300

American Library Association
50 E. Huron Street
Chicago, IL 60611
312-944-6780

American Planning Association
American Institute of Certified Planners
1776 Massachusetts Avenue, N.W.
Washington, DC 20036
202-872-0611

American Public Gas Association
P.O. Box 1426
Vienna, VA 22180
703-281-2910

American Public Health Association
1015 15th Street, N.W.
Washington, DC 20005
202-789-5600

American Public Power Association
2301 M Street, N.W.
Washington, DC 20037
202-775-8300

American Public Transit Association
1225 Connecticut Avenue, N.W.
Washington, DC 20036
202-838-2800

American Public Welfare Association
1125 15th Street, N.W., Suite 300
Washington, DC 20005
202-293-7550

American Public Works Association
1313 E. 60th Street
Chicago, IL 60637
312-667-2200

American Society for Public Administration
1120 G Street, N.W.
Washington, D.C. 20005
202-393-7878

American Water Works Association
6666 West Quincy Avenue
Denver, CO 80235
303-794-7711

Associated Public-Safety Communications Officers
P.O. Box 669
New Smyrna Beach, FL 32070
904-427-3461

Building Officials and Code Administrators International
4051 West Flossmoor Road
Country Club Hills, IL 60477
312-799-2300

Cable Television Information Center
1500 North Beauregard Street, Suite 205
Alexandria, VA 22311
703-845-1700

Government Finance Officers Association
180 Michigan Avenue, Suite 800
Chicago, IL 60601
312-977-9700

Governmental Refuse Collection and Disposal Association
P.O. Box 7219
Silver Springs, MD 20910
301-585-2898

Governmental Research Association
24 Province Street
Boston, MA 02108
617-720-1000

ICMA Retirement Corporation
1120 G Street, N.W.
Washington, D.C. 20005
202-637-3311

Institute of Internal Auditors
P.O. Box 1119
249 Maitland Avenue
Altamonte Springs, FL 32701
305-830-7600

Institute of Public Administration
55 W. 44th Street
New York, NY 10036
212-730-5480

Institute of Transportation Engineers
525 School Street, S.W.
Washington, DC 20024
202-554-8050

International Association of Assessing Officers
1313 E. 60th Street
Chicago, IL 60637
312-947-2069

International Association of Auditorium Managers
500 N. Michigan Avenue, Suite 1400
Chicago, IL 60611
312-661-1700

International Association of Chiefs of Police
13 Firstfield Road
Gaithersburg, MD 20878
301-948-0922

International Association of Fire Chiefs
1329 18th Street, N.W.
Washington, DC 20036
202-833-3420

International City Management Association
1120 G Street, N.W.
Washington, DC 20005
202-626-4600

International Conference of Building Officials
5360 S. Workman Mill Road
Whittier, CA 90601
213-699-0541

International Institute of Municipal Clerks
160 N. Altadena Drive
Pasadena, CA 91107
818-795-6153

International Personnel Management Association
1617 Duke Street
Alexandria, VA 22314
703-549-7100

Labor-Management Relations Service
1620 Eye Street, N.W., 4th Floor
Washington, DC 20006
202-293-7330

League of Women Voters
1730 M Street, N.W.
Washington, DC 20036
202-429-1965

National Animal Control Association
P.O. Box 321
Indianola, WA 98342
206-297-3293

National Association of Housing and Redevelopment Officials
1320 18th Street, N.W., Suite 500
Washington, DC 20036
202-429-2960

National Association of Towns and Townships
1522 K Street, N.W., Suite 730
Washington, DC 20005
202-737-5200

National Civic League
55 W. 44th Street
New York, NY 10036
212-730-7930

National Council for Urban Economic Development
1730 K Street, N.W., Suite 915
Washington, DC 20006
202-223-4735

National Environmental Health Association

720 S. Colorado Boulevard, Suite 970
South Tower
Denver, CO 80222
303-861-9090

National Fire Protection Association

Batterymarch Park
Quincy, MA 02269
617-770-3000

National Housing Conference

1126 16th Street, N.W., Suite 211
Washington, DC 20036
202-223-4844

National Institute of Governmental Purchasing

115 Hillwood Avenue, Suite 201
Falls Church, VA 22046
703-533-7300

National Institute of Municipal Law Officers

1000 Connecticut Avenue, N.W., Suite 800
Washington, DC 20036
202-466-5424

National League of Cities

1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
202-626-3000

National Public Employer Labor Relations Association

1620 Eye Street, N.W., 4th Floor
Washington, DC 20006
202-296-2230

National Recreation and Park Association

3101 Park Center Drive
Alexandria, VA 22302
703-820-4940

National School Boards Association

1680 Duke Street
Alexandria, VA 22314
703-838-6722

Public Administration Service

1497 Chain Bridge Road
McLean, VA 22101
703-734-8970

Public Risk and Insurance Management Association

1120 G Street, N.W.
Washington, DC 20005
202-626-4650

Public Technology, Inc.

1301 Pennsylvania Avenue, N.W.
Washington, DC 20004
202-626-2400

Town Affiliation Association of the United States

(Sister Cities International)
120 S. Payne Street
Alexandria, VA 22314
703-836-3535

The Urban Institute

2100 M Street, N.W.
Washington, DC 20037
202-833-7200

Water Pollution Control Federation

601 Wythe Street
Alexandria, VA 22314
703-684-2400

Department of Public Works

10 Park Plaza
Boston, MA 02116
617-973-7830

District Offices

Lenox 413-637-1750
Northampton 413-584-1611
Worcester 508-754-7204
Arlington 617-648-6100
Danvers 508-774-3190
Taunton 508-774-3190
Wellesley 617-235-6100
South Boston 617-482-0811

Traffic Division

617-973-7360

Bureau of Transportation, Planning, and Development

617-973-7310

Department of Revenue

Division of Local Services
100 Cambridge Street
Boston, MA 02204
Deputy Commissioner's Office: 617-727-2300
General Information: 617-727-2458

Bureau of Accounts

617-727-4401

Bureau of Local Assessment

617-727-4217

Municipal Data Management/Technical Assistance

617-727-9260

Property Tax Bureau

617-727-4231

Executive Office of Administration and Finance

One Ashburton Place
Boston, MA 02108

Affirmative Action

One Ashburton Place, 3rd Floor
Boston, MA 02108
617-727-7441

Civil Service Commission

617-727-2292

Department of Personnel Administration

617-727-8372

**Public Employee Retirement Administration
(PERA)**

617-727-9380

Retirement Law Commission

One Ashburton Place, 10th Floor
Boston, MA 02108
617-727-6684

Executive Office of Communities and Development

100 Cambridge Street
Boston, MA 02202
617-727-3264

Division of Municipal Development

617-727-7001
800-392-6445

Office of Municipal Management and Policy
Analysis
617-727-3253

Office of Planning and Community Development

Small Cities Program 617-727-0494

Economic Development 617-727-7180

Planning 617-727-3197

Center for Massachusetts Data

617-727-3237

Division of Housing

617-727-7130

Executive Office of Energy Resources

100 Cambridge Street, Room 1500
Boston, MA 02202
617-727-4732

Regional Offices

Western

145 State Street, Room 314
Springfield, MA 01103
413-739-9615

Southeast

Lakeville Hospital
Route 105
Lakeville, MA 02347
508-947-1231

Bureau of Solid Waste Management

617-727-3260

Division of Hazardous Waste

617-292-5851

Division of Water Supply

617-292-5770

Division of Water Pollution Control

617-292-5673

Division of Wetlands and Waterways Regulation

617-292-5519

Metropolitan District Commission

20 Somerset Street
Boston, MA 02108
617-727-5114

Executive Office of Public Safety

One Ashburton Place
Boston, MA 02108
617-727-3200

Architectural Barriers Board

One Ashburton Place, 13th Floor
Boston, MA 02108
617-727-3200

State Board of Building Regulations and Standards

One Ashburton Place
Boston, MA 02108
617-727-3200

Government Land Bank

6 Beacon Street, Suite 900
Boston, MA 02108
617-727-8257

Housing Appeals Committee

100 Cambridge Street, 11th Floor
Boston, MA 02202
617-727-6192

Massachusetts Cooperative Extension

215 Stockbridge Hall
College of Food and Natural Resources
University of Massachusetts
Amherst, MA 01004
413-545-0027

Executive Office of Environmental Affairs

100 Cambridge Street
Boston, MA 02202
617-727-9800

Division of Conservation Services

617-727-1552

**Massachusetts Environmental Policy Act Unit
(MEPA)**

617-727-5830

Massachusetts Coastal Zone Management

617-727-9530

Department of Environmental Management

617-727-3159

Division of Water Resources

617-727-3267

Division of Waterways

617-727-8893

**Department of Fisheries, Wildlife and
Environmental Law Enforcement**

617-727-1614

Department of Food and Agriculture

617-727-3000

Bureau of Land Use

617-727-6632

**Department of Environmental Quality Engineering
(DEQE)**

One Winter Street, 10th Floor

Boston, MA 02108

617-292-5500

Regional Offices

Southeast Region

Lakeville Hospital

Route 105

Lakeville, MA 02347

508-947-1231 ext. 680

Central Region

75 B Grove Street

Worcester, MA 01605

508-792-7650

Northeast Region

323 New Boston Street

Woburn, MA 01801

617-935-2160

Western Region

State House West

436 Dwight Street, 4th Floor

Springfield, MA 01103

413-785-5327

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- 2.00 Operating Procedures
- 3.00 Understanding Municipal Finance
- 4.00 Understanding How Your
Town Works
- 5.00 Dealing with Town Officials
and Employees
- 6.00 Overseeing Town Operations
- 7.00 General Administration
- 8.00 Working with Other
Levels of Government

Appendices

- Addresses for Federal and State Officials
 - Sources and Resources in the Federal
and State Government
 - National Professional Organizations
of Interest to Local Governments
-